

# Supreme Court of the United States

OCTOBER TERM, 1968

No. 573

---

NATIONAL LABOR RELATIONS BOARD,  
*Petitioner,*

—v.—

GISSEL PACKING CO., INC., *et al*

and

No. 691

FOOD STORE EMPLOYEES UNION, LOCAL NO. 347, AMAL-  
GAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF  
NORTH AMERICA, AFL-CIO,

*Petitioner,*

—v.—

GISSEL PACKING CO., INC.

---

ON WRITS OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FOURTH CIRCUIT

---

## INDEX

	Page
Chronological List of Relevant Docket Entries	323
Excerpts from Transcript of Proceedings, Before the NLRB, Ninth Region, Charleston, West Virginia, June 28, 1965, Case No's 9-CA-3856 and 9-CA-3477	325

## INDEX (Continued)

Page

Excerpts from Transcript of Proceedings, Before the NLRB,  
Ninth Region, Charleston, West Virginia, June 28, 1965,  
Case No's 9-CA-3356 and 9-CA-3477—Continued

## Witnesses:

Robert D. Jackson

Direct ..... 326

Further Direct ..... 335

James E. Goins

Direct ..... 335

Direct Resumed ..... 337

Cross ..... 342

Redirect ..... 344

Samuel Douglas Nelson

Direct ..... 345

Ivan Lewis Vickers

Direct ..... 349

Direct Resumed ..... 351

Cross ..... 353

Redirect ..... 354

Further Redirect ..... 355

Bernard Graley

Direct ..... 356

Cross ..... 359

Further Cross ..... 363

Harry Turner, Jr.

Direct ..... 365

Fred Haddad

Direct ..... 366

Further Cross ..... 369

Ray Darnell

Direct ..... 370

Cross ..... 375

Redirect ..... 377

Ray Darnell

Direct ..... 377



**INDEX (Continued)****iii****Page**

**Excerpts from Transcript of Proceedings, Before the NLRB,  
Ninth Region, Charleston, West Virginia, June 28, 1965,  
Case No's 9-CA-3356 and 9-CA-3477—Continued**

**Witnesses:****Ivan L. Vickers**

Direct	378
Cross	378
Redirect	379
Recross	379
Further Redirect	379
Further Recross	379

**Larry Woodall**

Direct	380
Cross	384
Redirect	388

**Doyle Thornton**

Direct	390
Cross	396
Recross	400

**Lewis Vickers**

Direct	401
Cross	404
Redirect	405

**James E. Goins**

Direct	406
--------	-----

**Ray Darnall**

Direct	407
Cross	415
Redirect	421

<b>Trial Examiner's Decision, dated November 30, 1965</b>	<b>424</b>
-----------------------------------------------------------	------------

<b>Appendix—Notice To All Employees</b>	<b>442</b>
-----------------------------------------	------------

<b>Trial Examiner's Supplemental Decision, dated March 28, 1967</b>	<b>444</b>
---------------------------------------------------------------------	------------

<b>Decision And Order, dated June 30, 1967</b>	<b>459</b>
------------------------------------------------	------------

<b>Appendix—Notice To All Employees</b>	<b>463</b>
-----------------------------------------	------------

<b>Erratum</b>	<b>465</b>
----------------	------------

## INDEX (Continued)

Page

Excerpts from Transcript of Proceedings, Before the NLRB,  
Ninth Region, Ashland, Kentucky, February 1, 1967, Case  
No. 9-CA-3728

466

## Witnesses:

Sherwood M. Spencer

Direct 466

Woodrow Roosevelt Gunnoe 468

Jack L. Brooks

Direct 469

Ray Darnell

Direct 469

Doris J. Clare

Direct 471

Cross 479

Ruby Riffe

Direct 482

Cross 484

Audrey Smith

Direct 486

Marlene Carter

Direct 489

Jeanelle Gates

Direct 491

Cross 493

Raie Perry

Direct 494

James E. McCann

Direct 495

Carlton S. Cass 495

June Menshouse

Direct 497

Ronald Skaggs

Direct 501

Eva H. Maynard

Direct 502

Redirect 503

# INDEX (Continued)

Page

Excerpts from Transcript of Proceedings, Before the NLRB,  
Ninth Region, Ashland, Kentucky, February 1, 1967, Case  
No. 9-CA-3728—Continued

## Witnesses:

Marlene Carter	
Direct	503
June Menshouse	
Direct	505
Ruby Riffe	
Direct	505
Ray Darnell	
Direct	506
Cross	507

## General Counsel's Exhibits:

2	—Letter from Food Store Employees Union, Local No. 347 to Mr. Frederick Holroyd	511
2(A)	—Union Authorization Card	512
3	—Letter from Gardner, Gandal and Holroyd, Law Offices to Honorable Sherwood M. Spencer	513
4	—Letter from Sherwood H. Spencer to Frederick Holroyd	514
4B	—Application, Food Store Employees Union, Local #847	516

## Respondent's Exhibits:

1	—Questionnaire to employees	517
2	—Letter from Retail Clerks Union Local 1059 to Mr. Fred Haddad, President	519

## General Counsel's Exhibits:

1-(a)	—Order Reopening Record and Remanding Pro- ceeding To Regional Director	520
4	—Letter from Chauffeurs, Teamsters and Helpers Local Union No. 175 to Mr. Fred Haddad	522

Trial Examiner's Decision, dated March 30, 1967	523
-------------------------------------------------	-----

Appendix, Notice to All Employees	549
-----------------------------------	-----

Decision and Order, dated June 28, 1967	551
-----------------------------------------	-----

Opinion of the Court of Appeals	553
---------------------------------	-----

Judgment of the Court of Appeals	555
----------------------------------	-----



**CHRONOLOGICAL LIST OF  
RELEVANT DOCKET ENTRIES****CASE NOS 9-CA-3356 AND 9-CA-3477**

- 10.24.64 Charge filed in Case No. 9-CA-3356
- 12. 3.64 Amended charge filed in Case No. 9-CA-3356
- 12.10.64 Complaint and notice of hearing issued in case No. 9-CA-3356
- 12.22.64 Respondent's answer received
- 2.15.65 Charge filed in Case No. 9-CA-3477
- 4.22.65 Order consolidating cases, consolidated complaint and notice of hearing issued by the Regional Director.
- 5.19.65 Respondent's answer in case No. 9-CA-3477
- 6. 3.65 Amendment to Order consolidating cases, consolidated complaint and notice of hearing
- 6.28.65 Hearing opened
- 6.29.65 Hearing closed
- 11.30.65 Trial Examiner's Decision issued
- 12. 2.65 Trial Examiner's Erratum
- 1. 3.66 General Counsel's limited exceptions received
- 1. 5.66 Company's limited exceptions received
- 11.15.66 Hearing reopened
- 3.28.67 Trial Examiner's supplemental decision issued
- 4.20.67 Company's exceptions to Trial Examiner's supplemental decision received
- 6.30.67 Board's decision and order issued

**CASE NO. 9-CA-3728**

- 10.19.65 Charge filed
- 12.16.65 Complaint and notice of hearing issued
- 12.20.65 Company's answer to complaint

**CHRONOLOGICAL LIST OF  
RELEVANT DOCKET ENTRIES—Continued**

- 1.13.66 Company's motion to strike portions of complaint
- 1.19.66 General Counsel's response to motion
- 1.25.66 Trial Examiner's order on motion issued
- 2. 1.67 Hearing opened and closed
- 3.30.67 Trial Examiner's decision issued
- 4.24.67 Company's exceptions received
- 6.28.67 Board's Decision and Order issued
- 8.14.67 Board's petition for enforcement filed
- 9.22.67 Certified record filed
- 6.28.68 Opinion issued by U.S. Court of Appeals for the Fourth Circuit
- 6.28.68 Decree entered by U.S. Court of Appeals for the Fourth Circuit
- 9.26.68 Board's petition for certiorari filed
- 12.16.68 Order issued by the U.S. Supreme Court granting Board's petition for certiorari



[fol. 1]

**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
NINTH REGION**

Case No. 9-CA-3356

Case No. 9-CA-3477

In the Matter of:  
**HECK'S, INC.**

and

**CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL UNION  
No. 175, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA**

Room 5404,  
Federal Building  
500 Quarrier Street,  
Charleston, West Virginia  
Monday, June 28, 1965.

The above-entitled matter came on for hearing, pursuant to notice, at 1:30 o'clock p.m., EDST,  
**BEFORE:**

**THOMAS F. MAHER, ESQ., Trial Examiner**

[fol. 4]

**PROCEEDINGS**

**TRIAL EXAMINER MAHER:** The hearing will be in order. This is a formal hearing before the National Labor Relations Board in the matter of Heck's, Incorporated, and Chauffeurs, Teamsters and Helpers, Local Union No. 175, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Case Nos. 9-CA-3356 and 9-CA-3477. The Trial Examiner conducting this hearing is Thomas F. Maher.

Will Counsel please state their appearances for the record?

**MR. MITTENDORF:** Counsel for the General Counsel, William C. Mittendorf, National Labor Relations Board, Ninth Region, Federal Office Building, 550 Main Street, Cincinnati, Ohio.

**MR. BOWLES:** I am Martin C. Bowles, representing Teamsters 175. My office is 407 Kanawha Banking and Trust Building, Charleston, West Virginia.

**MR. HOLROYD:** Appearing on behalf of the Respondent, Heck's, Inc., is Frederick F. Holroyd of the law firm of Gardier, Gandal and Holroyd, 521 Central Avenue, Charleston, West Virginia.

\* \* \*

[fol. 9]                      **ROBERT D. JACKSON**

was called as a witness by and on behalf of the National Labor Relations Board and, after having been first duly sworn, was examined and testified as follows:

**TRIAL EXAMINER:** Please be seated and give your name and address to the Reporter.

**THE WITNESS:** Robert D. Jackson, 1211 Lyndale Drive, Charleston, West Virginia.

\* \* \*

[fol. 13]                      **DIRECT EXAMINATION**

\* \* \*

**BY MR. MITTENDORF:**

**Q** By whom are you employed? **A** Chauffeurs, Teamsters and Helpers, Local No. 175, affiliated with the International Brotherhood of Teamsters, Chauffeurs and Helpers of America.

[fol. 14] **Q** They are located in Charleston? **A** Yes.

**Q** What is your capacity with that organization, sir?  
**A** A business agent.

**Q** How long have you been a business agent? **A** I have been a business agent approximately five years with the local union.

**Q** Were you with the Teamsters prior to that time?  
**A** Yes. I was employed by the Teamsters Joint Council No. 84 for about five years.

Q In your capacity as a business representative for Local 175 have you ever had occasion to deal with the employees of Heck's? A Yes.

Q When did that association with those employees begin, Mr. Jackson? A The first occasion was early May, approximate May 7, I would guess.

Q Was there a subsequent occasion? A Yes.

Q About October 5, 1964, it would be, would it not? A Yes. October 5, 1964.

Q With whom was your initial contact? A James Goins.

[fol. 15] Q What was your initial contact with Mr. Goins? A Mr. Goins called me on the telephone making inquiry as to how the employees of Heck's could get into the union.

Q What was done at the time, if anything; that is, at the time you talked with Mr. Goins? A Briefly I explained to him the procedures, the fact that they would have to sign application cards, pay initiation fees, and at the conclusion of the telephone conversation I arranged to meet with him at noon the following day.

Q You did meet with him? A I did.

Q What took place at that meeting? A I met with him at the corner, I believe, of 19th Street and first Avenue in Nitro, which is across the tracks from the employer's warehouse in Nitro. He was en route with a truck driver to Ashland, Kentucky, and he was unable [fol. 16] to talk to me, but I gave him application cards and told him to get them signed, and the initiation fee was \$6. He said he would call me later.

Q Do you recall any reference to the number of cards being made? A Not at that time. He was in a hurry, having to meet the truck driver and proceed on.

Q Did you later meet with Mr. Goins again? A Yes. However, I talked with him by phone prior to this. On the following evening he called me and made inquiry as to how many applications would be necessary to have. I told him he would have to have a majority, and explained the initiation fee to him, how you go about get-

ting elections with the National Labor Relations Board and just general information of the rule.

Then the following evening he called me again.

Q As nearly as you can recall, what date was this?

A That was probably about the sixth or seventh. Just a few days after the initial phone conversation.

Q Proceed. A Probably the seventh.

The following evening he called and asked if the warehouse employees in the Charleston and St. Albans Stores could join the union, and I informed him they could. The same application and initiation fee would prevail for them. [fol. 17] In this conversation we arranged to meet at noon on Friday the ninth.

Q Did you meet on the ninth? A We did.

Q Whom did you meet with on that occasion? A James Goins, Ivan Vickers and Searls.

Q What took place at that meeting? A I collected thirteen application cards and the initiation fees for all thirteen.

Q Mr. Jackson, I show you what has been identified as General Counsel's Exhibits 2 (a) through 2(m) and ask you if you can identify these? A These are the applications that I received from the three employees.

Q How many? A Thirteen.

Q At the time you received those three cards from Mr. Goins, Mr. Vickers, and Mr. Searls, did you have this discussion with them at that time, Mr. Jackson? A Yes. [fol. 18] We discussed the question of the number of employees employed by the employer at the Nitro Warehouse and the warehouse at the Charleston store and the warehouse at the St. Albans store, primarily those employees employed in the warehouse and truck drivers' group.

It was pretty well substantiated that we had the majority, so in the course of the conversation I told the three employees that I may go to the chief executive officer, whom they informed me was Mr. Fred Haddad, and request recognition that we would negotiate a contract and see if the matter could be handled that way rather than through the procedures of a Board Election.



Q Is there anything else? A A question of the initiation fees and dues was discussed again and I wrote out receipts for the money I received for the applications.

[fol. 19] Q Do you recall anything further in that discussion? A In the conversation I informed the three that upon requesting recognition of Mr. Haddad that it may be necessary for me to show the cards to them to verify the majority status of the union and inquired if this was all right with them, in an attempt to keep faith with those employees, and they informed me to take whatever procedures I felt to be necessary under the circumstances.

Q What did you do after that? A I ate lunch and then about 1:15 or 1:30 that afternoon I went to the company's offices in Nitro, West Virginia.

Q Who did you request to see? A I requested the receptionist to see Mr. Haddad. I announced who I was and that I wished to see Mr. Haddad. There was a short wait and I was called into Mr. Haddad's office.

TRIAL EXAMINER: What was the date of this?

THE WITNESS: This was October 9.

Q Who was present when you talked with Mr. Haddad? A Just Mr. Haddad and myself.

Q Will you describe for the Trial Examiner the conversation that took place at that time? A I informed Mr. Haddad that—

TRIAL EXAMINER: Hold the phone. On this question of request for bargaining, is Counsel disposed to concede that the request was made?

MR. HOLROYD: I would like to hear the testimony about it.

[fol. 20] TRIAL EXAMINER: Go ahead.

THE WITNESS: I informed Mr. Haddad that a majority of the employees had signed up with the Teamsters Union and I was requesting recognition of the union for the truck drivers and warehousemen for those employees employed at the warehouse in Nitro, West Virginia, the warehouse in the store at Charleston and the warehousemen in the store at St. Albans.

He inquired as to how he knew that I represented the majority, and I told him that I had signed cards. He requested to see them and I gave them to him.

Q You say you gave them to him. Are you referring to what has been identified as General Counsel's Exhibits 2 (a) through 2(m)? A That is correct.

Q Will you describe what happened when Mr. Haddad went through the cards? A Mr. Haddad went through the cards, two or three times, with such comments as he couldn't believe it, or "I have known this one all my life. He couldn't have done this", and such comments as this.

After he had gone through them he stated that he didn't know all of them and where they worked and requested if he could call someone else into his office. I told him it was quite all right with me.

[fol. 21] Q Did he call someone else in? A He called Mr. Ray Darnell in.

Q Can you identify Mr. Darnell? A Mr. Darnell is sitting at the table with Mr. Holroyd.

Q When Mr. Darnell came in what was done or said at that time? A Mr. Haddad handed the thirteen cards to Mr. Darnell, inquiring as to where they worked and who some of them were, and the two of them went through the cards at their leisure and pleasure.

Q Do you recall any further conversation? A Mr. Haddad suggested that he and I and Mr. Darnell go through the warehouse and talk to the warehouse employees and see if they really did want a union.

I reminded him that I was also requesting recognition for the warehouse employees of Charleston and St. Albans. He informed me that we would go through those warehouses also.

I informed Mr. Haddad that this was a little bit irregular and I never ran into a situation like this, but I felt I would be quite willing to do this if he would agree to recognize the union and sit down and negotiate a contract if the majority of the employees stated that they did want a union. He refused to do this.

[fol. 22] Q What was said? A Mr. Haddad was quite insistent upon identifying something, apparently, and



asked if it would be all right if he called an employee in and questioned him about signing the card. I informed Mr. Haddad that if he did he was subjecting himself possibly to an unfair labor practice, and he informed me that he knew all about unfair labor practices because he just got out of a trial regarding his Ashland Store in Ashland, Kentucky. He knew all about his rights under the law.

Thereupon, he called Ivan Vickers to his office. Mr. Vickers came into the office. Haddad asked Vickers if he had signed that card. Mr. Vickers stated he had. Mr. Vickers was then excused to return to his work place.

Q How long was Mr. Vickers present? A Just long enough to ask the question and suggest he go back to work. It was no longer than that.

Q After Mr. Vickers left was there any other conversation between you and Mr. Haddad? A I asked for recognition again and I asked that we sit down and negotiate for a contract. In each one of my comments or statements Mr. Haddad would merely say, "No comment", or "No further comment".

[fol. 23] Q Do you recall any other conversation? A No. I am sorry. I don't.

Q Do you recall any reference to any other stores? A When the recognition was made Mr. Haddad commented that he had stores in Huntington and Ashland.

TRIAL EXAMINER: When the recognition was what?

THE WITNESS: When I requested recognition for the warehouse at Nitro and for the warehouses in Charleston and St. Albans he informed me that he also had stores in Huntington, Ashland, Kentucky, and Parkersburg, West Virginia, each of them having warehouses.

I informed him that there was no request being made for the warehouse employees at the three stores because they were out of the marketing area of Charleston and would not be considered an appropriate unit, I didn't believe.

I informed him emphatically that the request was being made for truck drivers and warehousemen for the employees at the Nitro Warehouse, the warehouse in the

Charleston store and the warehouse in the St. Albans store; those and those only.

There was some discussion of the clerks and all and I informed him that there was no request for recognition of the clerks, that we did not historically negotiate for clerks.

**TRIAL EXAMINER:** Let us repeat that again. You were asking recognition for what?

**THE WITNESS:** Truck drivers and warehouse employees employed at Charleston, St. Albans, and Nitro, West Virginia.

**MR. MITTENDORF:** In connection with this exhibit I would like to state to Mr. Holroyd that this is a list of the warehouse employees that was provided us by Mr. Hermansdorfer, an attorney formerly representing the employer.

**MR. HOLROYD:** I have no objection to the introduction of that into evidence as being the document furnished by former Counsel.

**MR. MITTENDORF:** In that connection, Mr. Holroyd, I would like to ask, does this list accurately reflect the names of the employees at the various locations as of that date?

**MR. HOLROYD:** As far I can tell from my brief purview it does.

**TRIAL EXAMINER:** Without objection General Counsel's Exhibit No. 3 will be admitted into evidence.

You said warehouse employees when you were requesting the introduction, and I notice on here that there are individuals who are listed as drivers. I also notice that in your Paragraph 8, where you allege as the appropriate bargaining unit, drivers as well as warehousemen.

[fol. 25] Do I understand that the unit that you allege to be appropriate is a unit that includes all of the employees listed on this document, which is headed "Warehouse Employees", and that the positions of drivers that are listed on here are part of that unit?

**MR. MITTENDORF:** That is correct, sir.

**TRIAL EXAMINER:** This is an entire unit?

**MR. MITTENDORF:** That is correct.

**MR. HOLROYD:** We would stipulate that the General Counsel's Exhibit 3 constitutes all of the employees in the appropriate unit.

**TRIAL EXAMINER:** The alleged appropriate unit.

**MR. HOLROYD:** We would just—that all these employees listed on General Counsel's Exhibit 3 constitutes an appropriate unit.

**MR. MITTENDORF:** No. I would not so stipulate, Mr. Examiner. It is the contention of the General Counsel that the appropriate unit; that is, that the names of all the employees in an appropriate unit appear thereon, identified as either warehousemen or drivers, and further we specifically exclude the employees designated as being employed at Parkersburg, Huntington and Ashland.

In short, the unit being sought here is a unit of drivers and warehousemen at Nitro, West Virginia, St. Albans, West Virginia, and Charleston.

[fol. 29] **Q** Did you at anytime make a subsequent demand on Mr. Haddad? **A** I did.

**Q** When was that? **A** The early part of the following week, probably about the twelfth or thirteenth of October.

**MR. HOLROYD:** I didn't hear that question. I am sorry.

**TRIAL EXAMINER:** Read it back, please.

(Whereupon, the preceding two questions and answers were read by the Reporter as requested.)

**Q** What were the circumstances preceding the second demand, Mr. Jackson? **A** Mr. Goins had been fired and I called Mr. Haddad to inquire about it, to seek his rein-[fol. 30] statement, and in the course of the conversation I suggested that he recognize the union and that we commence negotiations for a contract.

**Q** Did you actually get in touch with Mr. Haddad on that date? **A** I talked to Mr. Haddad at that time. Yes. That was to whom I was speaking. He informed me that he had no comment on the request for recognition and negotiation.

However, he did say that he would get in touch with

Mr. Darnell to find out about Mr. Goins' discharge and call me back.

Q Did he ever do so? A No. I attempted to reach him the sixteenth, the Friday of that week, exactly one week after I had made my demand. Mr. Haddad was not in. I left word for him to call me, but he has not yet.

Q General Counsel's Exhibit 3 shows locations of the employer at Charleston, Nitro, St. Albans, Huntington, Parkersburg, and Ashland, Kentucky. At this time I would like for you to give us a physical description of the layout of those stores, using Charleston as a center. How far is it from Charleston to Nitro? A Approximately eleven miles.

Q In what direction would that be? A That would probably be in a northwesterly direction.

[fol. 31] Q From the Charleston store to the Nitro Store? A About eleven miles, I would guess.

[fol. 32] Q From the Charleston store to the St. Albans store? A Probably seven or eight.

Q In what direction? A In a westerly direction.

Q How far is it from Nitro to St. Albans? A The store and the warehouse would probably be three or four miles.

[fol. 33] Q Mr. Jackson, subsequent to October 9 did you receive additional cards? A I did.

MR. MITTENDORF: I would like to have marked for identification as General Counsel's Exhibit 5 (a) and 5 (b) these two documents.

(The documents above-referred to were marked General Counsel's Exhibits Nos. 5 (a) and 5 (b) for identification.)

[fol. 34] Q I show you what has been identified as General Counsel's Exhibits 5 (a) and 5 (b) and ask you if you can identify those, Mr. Jackson? A These are applications that were received in my office.



[fol. 35] FURTHER DIRECT EXAMINATION

BY MR. BOWLES:

Q Tell the Trial Examiner what Mr. Haddad said about the appropriate unit in reference to the various stores. A Mr. Haddad said that he had warehouses in all his stores and as a result questioned the unit. However, I told him that I was amenable to negotiate either on behalf of the Nitro Warehouse or separate contracts for the warehouses in the store. I would be happy to listen to anything he had in mind in that respect.

[fol. 48]

JAMES E. GOINS

was called as a witness by and on behalf of the National Labor Relations Board and, after having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Please be seated and give your name and address to the Reporter.

THE WITNESS: James Edward Goins, 1654 McClung Street, Charleston, West Virginia.

DIRECT EXAMINATION

BY MR. MITTENDORF:

Q Were you ever employed by Heck's, Mr. Goins? A Yes.

Q Do you recall when you started there? A It was on or about August 1, 1964.

Q What was your job? In what capacity were you hired? A Warehouseman.

[fol. 49] Q What was your rate of pay? A \$1.25 an hour.

Q Were you familiar with the union campaign at Heck's? A Well, I was talking to them about the last week or the first week of October.

Q You say you talked to them. Who are you referring to? A Ivan Vickers.

Q You talked to Ivan Vickers. Did you talk to anyone else. A James May and U. R. Searls.

Q Will you describe what happened after your conversation with these men? A I called Mr. Robert D. Jackson, business representative of the union, Local 175.

Q Do you recall when that was? A Fifth.

Q Of what? A October, 1964. At his home.

Q What happened after that? A We arranged a meeting for October 6 at 19th Street and First Avenue. That is the Bank of Nitro Parking Lot. It is right on the corner of 19th Street and First Avenue.

Q Did you meet there with Mr. Jackson? A Yes, sir. I met with him at noon.

Q What was the discussion you had with him at that time? A I was in a rush and we didn't get to talk too much. I obtained application blanks for the union.

[fol. 50] Q Did he give you any instructions?

MR. HOLROYD: I object to the materiality of this.

TRIAL EXAMINER: Overruled.

Q Go ahead. A I picked the applications up, for I was on my way in to Huntington and Ashland that day. He told me to get in touch with him as soon as we had them signed, then get in touch with him.

Q What did you do with the cards that he gave you? A I took them back. I carried them around one day with me. Then on October 6 I give some to Vickers and I kept them. We talked to the ones in the warehouse.

Q Did you give cards to anyone besides Mr. Vickers? A I passed them out to the ones I passed out between the guys to be filled out and to be given back to me.

Q What happened to those cards? A When Mr. Vickers—the ones I give him, he had passed out between the men.

MR. HOLROYD: I object to this testimony about what Mr. Vickers did unless he can establish that he saw it.

Q What eventually happened to the cards? A They was give back to me.

Q They were returned to you? A Returned to me.

[fol. 51] Q How many of these cards did you personally have signed, Mr. Goins? A About six or seven.



Q Would you have any way of recalling whether other cards were signed in your presence? A I signed the back of them where the witness is supposed to sign.

[fol. 53] Q Mr. Goins, there is your card. I ask you if that bears your signature? A Yes, sir.

Q Here is the card of Mr. Vickers. I ask you if that bears your signature? A Yes, sir. It does.

Q Did Mr. Vickers sign that in your presence? A Yes.

Q There is the card of Mr. Curry. I ask you if that bears your signature? A Yes.

[fol. 54] Q Did Mr. Curry sign that card in your presence? A Yes.

Q Here is the card of Mr. Woodall. I ask you if that bears your signature? A Yes.

Q Did Mr. Woodall sign the card in your presence? A Yes.

Q Here is the card of Samuel Douglas Nelson. I ask you if that bears your signature? A Yes. It does.

Q Did Mr. Nelson sign it in your presence? A Yes.

Q Here is the card of Mr. Hughart. Did Mr. Hughart sign this in your presence? A No.

Q This does not bear your signature. A I am not sure.

Q Here is the card of Mr. Johnson. I ask you if that bears your signature? A Yes.

Q Did Mr. Johnson sign in your presence? A Yes.

[fol. 61] DIRECT EXAMINATION RESUM

BY MR. MITTENDORF:

Q After these cards were returned to you, Mr. Goins, what did you do with them? A I called Mr. Jackson.

[fol. 62] Q Do you recall the date that you called him? A October 8.

Q What did you tell Mr. Jackson? A I told Mr. Jackson that I had the majority of applications signed. We arranged to meet at 19th Street and First Avenue, the Bank of Nitro Park Lot, at noon.

Q Did you meet? A Yes. We did.

Q Who met with you, if anyone? A Mr. Vickers and U. R. Searls.

Q What did you do? A Turned the applications in to Mr. Jackson and give him the money, the initiation fee.

Q Do you recall anything further? A We asked what procedure would follow. Mr. Jackson said he would probably go talk to Mr. Fred Haddad.

Q Who is Mr. Haddad? A He is President of Heck's.

Q All right. A And try to negotiate a contract, try to represent us. He asked us if this was all right and we told him to do the best, the best that he could do.

Q Was that all there was to that meeting? A He wrote out receipts for us and I handed him the money.

[fol. 63] Q With respect to the union campaign what was the next thing that happened? A We went back after lunch on October 9. We went back to work at one o'clock, and met Mr. Vickers in the aisle. It was about—

MR. HOLROYD: I can't understand him with his hand over his mouth.

THE WITNESS: I met Mr. Vickers around two o'clock. He told me that he had been called into Mr. Haddad's office.

MR. HOLROYD: I object to this hearsay testimony.

TRIAL EXAMINER: Overruled.

THE WITNESS: About two o'clock Mr. Ray Foy called a meeting.

BY MR. MITTENDORF:

Q Who is Mr. Ray Foy? A He was the warehouse manager.

Q All right. A He called a meeting in his office, all the warehousemen. After we assembled, Mr. Fred Haddad, Mr. Ray Darnell, Mr. Bill Ellis—

Q Will you identify these people as their names come up for the first time? Who is Mr. Ellis? A Mr. Ellis—

MR. HOLROYD: These are stipulated to and admitted in the complaint.

BY MR. MITTENDORF:

Q Anyone else? A Mr. Graley, Bernard Graley.  
[fol. 64] Q Will you tell the Trial Examiner what took place at that meeting? A Mr. Haddad came in. He wanted to know why we wanted a union, what did the union offer us that he couldn't offer us, that he could work us the way he desired. He didn't have to guarantee us forty hours a week, he could work us a split shift or however he desired. He mentioned that he was flabbergasted at us wanting a union.

Q Do you recall anything further of Mr. Haddad's speech at that time, Mr. Goins? A He asked Mr. Charles Lewis if he signed an application, and he told him, no, he did not.

Q Did he ask anyone besides Mr. Lewis?

MR. HOLROYD: I object to the leading nature of the question.

TRIAL EXAMINER: Overruled.

THE WITNESS: Not that I can recall right now.

BY MR. MITTENDORF:

Q What was Mr. Lewis' capacity at the warehouse?

A He worked in the cosmetics department part-time.

Q Part-time? A Yes, sir.

Q What did he do with the other part of his time, if [fol. 65] you know? A He was going to school.

Q Do you know where? A I believe it was West Virginia State.

Q Do you recall anything else that Mr. Haddad said while he was talking to the employees? A No. I don't.

Q You do not recall anything further? Was there any reference to withdrawal?

MR. HOLROYD: I object to the leading nature of the question.

TRIAL EXAMINER: Overruled.

BY MR. MITTENDORF:

Q You may answer. A Mr. Haddad told us in the meeting if any of us wanted to withdraw from the union that he wouldn't fire nobody, and that he would fire nobody for joining the union.

\* \* \* \*

[fol. 69] BY MR. MITTENDORF:

Q Mr. Goins, on what date did you leave Heck's? A I worked the ninth. I come out to work the tenth of October, 1964, and went to work at the regular time. I worked—they put three of us on the outside washing down the driveway in the parking lot.

Q What day of the week would this have been, if you [fol. 70] can recall? A Saturday.

Q All right, sir. A We was outside, three of us, Nelson—

Q Since we have two Nelsons, tell us which one. A Opie Nelson and U. R. Searls and myself outside washing down the driveway in the parking lot.

Q What did you use? A About ten o'clock Ray Foy called a meeting in his office and told us—he called everybody but the cosmetics department, and told us—

Q Just a moment. Forget the meeting. What happened after the—

MR. HOLROYD: I am going to object. If the witness is getting half an answer out here and then we come up and say forget it—

TRIAL EXAMINER: You can cross examine.

MR. MITTENDORF: The meeting in this particular case does not go to the allegation of the complaint. It was something that happened that morning and that was the extent of it.

MR. HOLROYD: In the light of that explanation I will withdraw my objection.

THE WITNESS: At eleven o'clock we went back out, finished up our work outside, and at eleven o'clock that day we finished washing down the driveway in the parking lot with a fire hose. I was wet from shoulders down, sopping wet, and after we finished I went up to Bernard [fol. 71] Graley and asked him to go home.

He said, "Well".

I went over to Ray Foy's office. He was in his office. I opened the door and told him I was going home. He nodded his head okay. I punched out at eleven o'clock and went home.



BY MR. MITTENDORF:

Q You said two other men were working outside with you. Were they wet? A They wasn't as wet as I was.

Q Is there a reason? A I had hold of the nozzle, a leaky nozzle, on a high pressure fire hose.

Q You punched your card out at approximately eleven o'clock? A Yes.

Q Had you ever done this before? Had you ever left early before? A No.

Q Did you report to work the following Monday? A Yes. I did.

TRIAL EXAMINER: What day was this that he punched out?

THE WITNESS: October 10, Saturday.

I reported for work October 12. I went in to the time clock. I had no card. Right offhand I can't call their names, but there was some from the cosmetics department, and they didn't have no timecard. Well, we stayed [fol. 72] around—

MR. HOLROYD: I object to the testimony about these others as being immaterial.

TRIAL EXAMINER: Sustained.

THE WITNESS: I went up front when Ray Foy and Bernard Graley come in for work and asked them for a timecard. He told me he would fix it out. He asked everybody else to leave his office and he told me my work, and he said—he told me that I left on Saturday and didn't tell nobody.

He said, "You was hired on ninety days probation period", and right now I still know nothing about the ninety day probation period, "That your work was unsatisfactory, and we are going to have to let you go".

There was nobody in the room but Ray Foy and I. While he was talking to me he was sitting at his desk. He had a drawer out and he had some writing on a piece of paper. It looked like to me that he was reading off of it.

BY MR. MITTENDORF:

Q Had there been any complaints about your work prior to this time, Mr. Goins?

**TRIAL EXAMINER:** He just testified his work was satisfactory.

**MR. HOLROYD:** I object to this line of questioning, anyway. That is anticipating the defense.

**TRIAL EXAMINER:** Overruled.

**BY MR. MITTENDORF:**

**Q** How many hours a day had you been working pre-[fol. 73] ceding October 12, Mr. Goins? **A** I averaged, now, just average, for it is hard to say, but I averaged anywhere from ten to twelve hours a day, eight to twelve hours a day.

**Q** How long had that been going on? **A** Since I started there, about the third of August.

**Q** Had you ever, since you left there on October 12, applied for re-employment? **A** No.

**TRIAL EXAMINER:** You say you started on the first of August?

**THE WITNESS:** About the first of August.

[fol. 102]

Room 5404,  
Federal Building,  
500 Quarrier Street,  
Charleston, West Virginia  
Tuesday, June 29, 1965

[fol. 104]

**JAMES E. GOINS**

was recalled as a witness and, after having been previously duly sworn, was examined and testified further as follows:

[fol. 105]

**CROSS EXAMINATION**

**BY MR. HOLROYD:**

[fol. 118] **Q** Let me go back to Saturday. Why didn't you go up to Vickers and ask him if you could leave? **A** To me Vickers wasn't a foreman at that time.



Q You earlier testified that he told you what to do.

MR. MITTENDORF: I am going to object to that, Mr. Trial Examiner.

TRIAL EXAMINER: Overruled.

THE WITNESS: That is when we first opened up the warehouse. There wasn't nobody there then. The only person we would see once in a while was Mr. Ray Darnell, Mr. Ellis, and Mr. Haddad.

BY MR. HOLROYD:

Q But you didn't consider Vickers as the boss? A Not at that time. No.

Q Had his authority diminished? Are you saying when you first went there and opened the warehouse, he was a boss, but at the time you were discharged he was not a boss? A To me he wasn't actually a foreman then. But maybe Mr. Haddad come up and told him to tell something. I don't know if Mr. Haddad told him to have me go on the night shift or not.

Q You testified in your affidavit that he told you what to do. Is that correct? A He told us what to do right then.

[fol. 119] Q My question is, did he stop telling you what to do after they first opened the warehouse, from that time until the time you were discharged? A He didn't tell us—the only way that I can recall right now that he would tell somebody to do something is Mr. Foy or Bernard Graley would tell him to go get somebody to help his do this or that.

Q You were always around when they told that? A No.

Q How do you know they always told him to, then? A I was around quite a few times that he told him.

Q Were you around all the time they told him? A Not every time.

Q Isn't it a fact that Mr. Vickers is one of your fellow employees and you would like to keep him in this case not as a supervisor?

. . . . .

## [fol. 124] REDIRECT EXAMINATION

BY MR. MITTENDORF:

Q Mr. Goins, do you know if there is a difference between the way Heck's pays supervisors and the way they pay their regular warehouse help? A Their supervisors are all on salary.

Q To your knowledge was Mr. Vickers ever on a salary? A No.

Q During the time that you first started at the warehouse [fol. 125] you said that Mr. Vickers told you certain things to do. Did Mr. Vickers work right with you doing those things? A Yes, sir.

Q Did he handle as much merchandise as you did? A Yes, sir.

Q He loaded and unloaded trucks? A Yes, sir.

\* \* \*

[fol. 127] TRIAL EXAMINER: I thought you said he was alone in the office.

THE WITNESS: He was. But where his office is there is three or four big windows all across. He can sit and look straight out on shipping and receiving.

BY MR. MITTENDORF:

Q Could you describe the office partitions?

TRIAL EXAMINER: He just did. He said there was glass all the way around.

THE WITNESS: No. Just on one side. Facing the shipping and receiving docks.

BY MR. MITTENDORF:

Q How far was Mr. Vickers from you and Mr. Foy?

A Twenty to thirty feet.

Q The partitions are full height partitions? Do they go all the way to the ceiling? A The glass?

Q Yes. A No.

Q You said that you mentioned to Mr. Ellis that you had been told that you were drinking on the job, that you were told this by one of the other employees.

Q Do you drink, Mr. Goins? A I don't drink, definitely.

[fol. 128] TRIAL EXAMINER: You do not drink what?

THE WITNESS: I don't drink, definitely. I don't drink nothing but milk and water and pop and koolade.

TRIAL EXAMINER: Koolade?

THE WITNESS: Yes, sir.

[fol. 131] SAMUEL DOUGLAS NELSON

was called as a witness by and on behalf of the National Labor Relations Board and, after having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Please be seated and give your name and address to the Reporter.

THE WITNESS: Samuel Douglas Nelson, 84 Leftwich Avenue, Madison, West Virginia.

### DIRECT EXAMINATION

BY MR. MITTENDORF:

Q Mr. Nelson, do you recall when you first started working for Heck's? A Yes. I started September 13, 1963.

Q Are you still employed at Heck's? A Yes. I am.  
[fol. 132] Q In what capacity were you hired? A Warehouseman.

Q At what location? A St. Albans.

[fol. 137] BY MR. MITTENDORF:

Q During the time of the union campaign, Mr. Nelson, did you on any occasion ever discuss the union with any of the supervisors of Heck's? A Yes, sir.  
[fol. 138]

Q How many times? A Twice.

Q Directing your attention to the first time, when was that? A I believe it was October 10.

Q Do you recall what day of the week that was? A It was on a Saturday.

Q Who was the management representative involved?  
A Junior Turner, Department Head of Housewares at the Charleston store.

Q Where did this conversation take place? A It took place in his car on the parking lot.

Q On the parking lot where? A On the Heck's parking lot in the southwest corner.

Q Of what store? A St. Albans.

Q Mr. Turner had come from Charleston over to St. Albans? A He was there when I came back from eating lunch.

Q How often did Mr. Turner come to the St. Albans store? A Not very often. Sometimes he would come down there and pull stock from our warehouse and take it up to Charleston to the store.

[fol. 139] Q Would you describe for the Trial Examiner what happened preceding that conversation and during it? A Like I said I was coming back from lunch. I was walking through the warehouse and I saw him and my boss, which was Junior Ferrell, talking on the other end of the warehouse. As I came up to him he said, "The man said you would go with me".

I said, "All right".

So I accompanied him to his car. We got in his car and he drove over, like I said, to the southwest corner of the parking lot. He told me that he had heard we had tried to join the union.

I said, "Yes. That is correct."

He said, "I understand that Larry Woodall has also".

I said, "Yes, sir".

He said, "I can get you out of this mess if you want me to", said, "I can get withdrawal cards and therefore you won't have to through with it".

I said, "No. I am not interested for myself, and I don't feel that anybody else is either".

He said, "Well, you know that they don't have to give you any raise or increase in salary or cut your hours or anything like that if you do get the union in".

I said, "Well, that may be true. I don't know, really".

He said, "You can also hurt yourself by not getting the [fol. 140] amount of hours which you have been. There-



fore, it would decrease your pay, of course, and it would hurt the people who work on the floor, and the company could, if they wished, discontinue the bonuses. Therefore, it would hurt everybody, of course."

Q. How long did the conversation last? A I would say twenty, maybe thirty, minutes. I am not sure.

Q During the time that you had been there had you ever had a private conversation with Mr. Turner before?

A No, sir.

Q Directing your attention to the second time you had a conversation with a management representative, Mr. Nelson, when was that? A I believe it was just about [fol. 141] a week after I talked to Mr. Turner, which would have been about the 17th of October, I think.

Q Who was the management representative involved that time? A Mr. Haddad himself.

Q Where did this conversation take place? A Well, I was at the St. Albans store in the warehouse and he came in and he told me, he says, "I want to see you over in my office at Nitro", and asked me if I could get over there. I told him, "Yes", I could.

He said, "I don't want you to tell anybody. I just want you to come right on over and not say anything to anybody else".

I said, "Well, I will have to go get my coat". As I was going back to get my coat I run into Larry Woodall in the warehouse and I told him, "Fred just asked me to come over to his office in Nitro." I said, "He told me not to tell anybody, but I am going to tell you. There is something up. I don't know what".

Q Did you go on over? A Yes, sir.

Q What time did you arrive? A I would say probably twenty after ten, something like that.

Q Did you see Mr. Haddad? A Yes, sir. After I waited until he got there. He wasn't there at the time. [fol. 142] I had to wait about ten minutes.

Q When you went into his office who was present? A Just me and Mr. Haddad.

Q Would you describe for the Trial Examiner the conversation that took place at that time? A Mr. Haddad



told me that the union representative had been there and showed him signed cards by employees of Heck's and that I was one of them and that when he saw my card he almost passed out.

He said, "In fact, I got so mad I went outside and bawled out my receptionist", who is my sister-in-law, Jackie Kitchen.

TRIAL EXAMINER: Whose sister-in-law is she? Yours or Mr. Haddad's?

THE WITNESS: Mine.

BY MR. MITTENDORF:

Q Would you continue? A He asked me what I was making at the time when I was there. I told him. I said, "I am making \$1.40 an hour at this time".

He said, "If I give you a salary job with \$325 a month will you help me to break up the union in the St. Albans store? He said, "I only want one of two answers, a simple yes or no".

I said, "No. I cannot do it".

Then he asked me, said, "Well, do you believe that you [fol. 143] are due another raise?"

And I said, "No. I doubt it under the circumstances, since I am trying to get into the union".

He said, "Well, I will call Mr. Darnell in and we will see if you are".

I said, "All right".

And so he called Mr. Darnell in and Mr. Darnell brought a list with him and Mr. Haddad and Mr. Darnell looked over the list and they said, "No. You are not due".

I said, "Well, I didn't figure I was".

Then Mr. Darnell said to me, said, "I wish that you could be on our side".

I said, "Well, it is just one of those things. I am not on your side this time".

Q Do you recall anything further, Mr. Nelson? Do you recall any other statements of either Mr. Haddad or Mr. Darnell? A Mr. Haddad asked me what I expected to gain if we did get the union in. I told him better wages and, of course, less hours and more benefits.

He told me at that time, said, "Well, that is all I have to say right now. You can go back to work." So I went back to work.

Q How long did this conversation actually take? How long were you in the office? A Forty minutes to an [fol. 144] hour, somewhere along there. I am not sure.

[fol. 145] IVAN LEWIS VICKERS

was called as a witness by and on behalf of the National Labor Relations Board and, after having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Please be seated and give your name and address to the Reporter.

THE WITNESS: Ivan Lewis Vickers, Griffithsville, West Virginia.

#### DIRECT EXAMINATION

[fol. 146] BY MR. MITTENDORF:

Q Are you presently employed? A No, sir.

Q Were you ever employed at Heck's? A Yes, sir.

Q When were you employed at Heck's? A I started out at their warehouse at Lewis Street in Charleston. We later moved to Nitro.

Q Do you remember when you started for Heck's? A I think it was April 2 of '63.

Q What was your rate of pay at the time you started? A \$1.15 an hour.

Q Do you recall when it was you left Lewis Street? A I think it was in August, I believe.

Q Of what year would that be? A '64.

Q That is when you went to Nitro? A Yes, sir.

Q How long did you remain at Nitro? A Until approximately the first week of December.

Q Also of 1964? A Yes, sir.

Q What happened the first week in December? A I quit to enlist in the Air Force.

Q At the time—

TRIAL EXAMINER: What date was that?

[fol. 147] THE WITNESS: When I enlisted?

TRIAL EXAMINER: When did you quit to enlist in the Air Force?

THE WITNESS: I think it was December 3, 1964.

BY MR. MITTENDORF:

Q At the time you quit to go in the service what was your rate of pay? A \$350 per month.

Q How long did you remain in the service? A Approximately about three weeks.

Q About three weeks? A Yes.

Q What was the reason for your discharge? A Temporary medical discharge.

Q Mr. Vickers, when were you transferred from an hourly rate to the \$350 a month salary? A I think the date was October 21 of '64.

Q What was your last previous hourly rate? A \$1.50 per hour.

Q Were you familiar with the union campaign at Heck's? A Yes, sir.

Q When did you first learn about it? A It was about October 4, I believe. The first week of October of '64.

Q Who did you learn about it from? A From Mr. Goins.

[fol. 148] Q Were there any other individuals involved in it at that time? A Mr. Virgil Searls, and I believe that was about it at that time.

Q What was done after that? A I gave the business representative's card to Mr. Goins and he called and got in touch with him and arranged a meeting and got the application blanks from him. Then he gave me part of them and I passed them out to some of the employees and he gave them to the others.

Later on during that week we went around and collected and got the initiation fee. I gave them to Mr. Goins.

Q Did you personally have some cards signed? A Yes, sir.

Q Do you remember the names of the individuals who signed for you. A I was there when everyone one in the Nitro warehouse signed it.

Q Who would those people be? A Mr. Virgil Searls, and I was there when Mr. Goins signed, and myself and James May, Richard Johnson, Ted Lanham. That is all I recall right offhand.

[fol. 150]

## DIRECT EXAMINATION RESUMED

BY MR. MITTENDORF:

Q After you had all the cards signed what did you do with them? A We took them along with myself and Mr. Searls and Goins and arranged a meeting with Mr. Jackson at the parking lot of the Bank of Nitro at 19th Street and we met approximately at noon and handed the cards over to him, along with the initiation fees.

Q As a result of that meeting was there a determination made as to what to do with the cards? A Yes, sir. He had decided that he was going to go to Mr. Haddad, the President of the company, either the day or the following day, and show him the cards and see if he could organize a contract.

Q Did he, to your knowledge, go see Mr. Haddad? [fol. 151] A Yes, sir. He went that same day.

Q How did you know that? A Because I was called up into the office while he was present.

Q Who called you in? A Mr. Bernard Graley, I believe it was.

Q When you went into the office who was present? A Mr. Jackson and Mr. Haddad and Mr. Ray Darnell, I believe.

Q Will you describe for the Trial Examiner what occurred when you went in there? A I walked in and Mr. Haddad had the applications in his hand looking at them. He asked me if I had signed the application to join the Teamsters Union and I told him "yes." That was all, and I left and went back to work.

Q How long were you actually in the office there, Mr. Vickers? A Approximately about twenty seconds.

Q With respect to the union did anything else happen later that same day? A Yes, sir. There was a meeting



called of all the warehouse employees in the office of Mr. Foy, who was the warehouse manager.

Q Who were the company representatives present at that meeting? A Mr. Haddad and Mr. Ray Darnell and [fol. 152] Mr. Bill Ellis and Mr. Ray Foy and Mr. Bernard Graley.

Q What employees were present? A The whole warehouse employees.

Q Who spoke at that meeting? A Mr. Haddad said that he didn't know what the union had promised us that he couldn't promise us, and he said he could prove that he couldn't afford to pay union scale. In fact, he said he couldn't afford to pay \$1.15 an hour and that if the union came into effect that he could cut their hours as low as ten hours a week if they wanted to and work them split shifts, such as four hours in the morning and four hours at night.

Q Do you recall anything else that Mr. Haddad said at that time? A I think he asked Mr. Charles Lewis if he had signed a union card and he said "no." In fact, he had not signed one at all.

[fol. 158] BY MR. MITTENDORE:

Q Do you recall anything further that was said at that time, and by whom? A Mr. Haddad asked me, as I was getting ready to leave, he wanted to know if I would take the raise and would try to break up the union. So I told him that I would try, and I left.

Q Did you in fact receive a raise subsequent to that time? A Yes, sir. I received a raise but it was not on the following check I received. The first raise I received was in the first week of November of '64.

Q Was there any other change in your duties when you received this raise? A No, sir. There was not.

Q Did you continue to punch a time clock? A Yes, sir.

Q Did you have any added authority? A No, sir.

Q Did you continue to work with the other employees?

A Yes, sir.

Q Did you handle merchandise? A Yes, sir.  
[fol. 159] Q Load and unload trucks? A Yes, sir.

[fol. 163] CROSS EXAMINATION

[fol. 167] BY MR. HOLROYD:

Q You actually received this bribe, did you not? A  
[fol. 168] Yes, sir.

Q Did you do anything to justify receiving this money?  
A No, sir.

Q You told Mr. Haddad you would, though? A That  
I would try.

Q But you didn't? A No, sir.

Q Did you ever attend supervisory meetings? A Yes,  
sir. I have.

Q You were in fact a supervisor prior to your discharge, were you not? A At one time I was. When we moved to Nitro I say that I wasn't.

Q You were a supervisor in the Lewis Street warehouse? A Yes, sir. I was the manager of the warehouse.

Q Then you moved over to the Nitro warehouse. A  
Yes, sir.

Q Did you have a reduction in pay when you went over there? A No, sir.

Q What did you do at the warehouse? That is, the Lewis Street warehouse, that you didn't do in Nitro? A I wasn't in charge of the warehouse. They told me I was in charge of shipping.

Q You told the employees in shipping what to do, what  
[fol. 169] to load and what to unload. Is that correct?  
A Yes, sir.

Q That is after you went to Nitro? A Yes, sir.

Q You had that responsibility to direct them? A  
Yes, sir.

Q In fact, prior to going over to Nitro you hired some employees. Is that not correct? A Yes, sir. At Lewis Street.

Q You hired quite a few, didn't you? A I would say approximately six or eight.

## [fol. 171] REDIRECT EXAMINATION

BY MR. MITTENDORF:

Q You stated you attended supervisory meetings. How often are these held? A Once per month, I believe it is.

Q How often did you attend them? A Every month.

Q Did you attend every month? A Yes, sir.

TRIAL EXAMINER: When was the last one you attended before you went in the service?

THE WITNESS: I don't remember the date. I would say it was in September, I believe.

BY MR. MITTENDORF:

Q In September was the last one? A I believe it was.

Q What about the October and November meetings?

A I wasn't asked to go.

Q You were not asked to go? A No, sir.

Q When you were at Lewis Street were you on an hourly basis or a salaried basis? A Hourly.

[fol. 172] Q The first time you ever worked on a salaried basis was after your meeting with Mr. Darnell and Mr. Haddad. Is that correct? A Yes, sir.

Q You got your salary in the first of November? A Yes.

Q While you were at Nitro who was your supervisor?

A Mr. Graley and at first Mr. Foy while he was there.

Q How were Mr. Graley and Mr. Foy paid, if you know? A I don't know. But monthly, I suppose.

Q You do not know? A No, sir.

Q You were talking about giving the men orders and filling orders that went to the stores. Were you told by Mr. Graley or Mr. Foy what orders to give?

MR. HOLROYD: I object to the leading nature of the question.

TRIAL EXAMINER: I will sustain that.

BY MR. MITTENDORF:

Q What type of orders did you receive from Mr. Foy or Mr. Graley? A They would give me the individual orders to go to separate stores, such as Ashland and so

forth. They would give them to me and I was to see that they were filled and loaded on the trucks.

[fol. 173] Q When they were loaded on the truck would you work with the men? A Yes, sir.

\* \* \*  
BY MR. MITTENDORF:

Q How did your duties differ from the other warehouse employees? A The only thing that I know that I was just in charge to see that the orders were filled, and that was it.

Q During the time that you were at Nitro did you ever hire anybody over there? A No, sir.

Q Did you ever interview anybody for employment? A No, sir.

Q Did you report any infractions of rules to Mr. Foy or Mr. Graley. A No, sir.

\* \* \*  
FURTHER REDIRECT EXAMINATION

BY MR. BOWLES:

Q When did Mr. Darnell come to the Nitro warehouse? A Mr. Darnell?

[fol. 174] Q Yes. A He moved when all the officers were brought down. I don't know the date.

Q Where had he been before? A Mr. Darnell had been at St. Albans.

Q When Mr. Darnell came to the Nitro warehouse were your duties changed any? A Mr. Darnell?

Q Yes, sir. A No, sir. He just told me I was in charge of the shipping.

Q How about Mr. Foy? When did he come there? A Mr. Foy came, I believe, from the Parkersburg store. That was while the construction men were still working—

Q What was his title or duty; that is, Mr. Foy? A He was the warehouse manager. He was in charge of everyone in the warehouse.

Q How did your duties compare at the Nitro warehouse after Mr. Foy came there. A After Mr. Foy came?



Q Yes. As to what they were before. A I wasn't at the Nitro warehouse but two days before Mr. Foy came. Then I went back to Lewis Street and stayed there approximately two weeks, or a week or two. When I went back down there is when they told me I was in charge of shipping.

[fol. 175] Q At any time did you ever have the title as warehouse manager? A At Nitro?

Q At any place. A At Lewis Street. Yes, sir.

Q Did you have at Nitro? A No, sir.

Q Besides seeing the orders were filled, did you have any other supervisory duties? A No, sir. I don't believe.

Q If someone didn't fill the order properly, what happened then? A It came back to me. I was responsible for it.

Q Responsible in what way? A That if they weren't filled I had to either do it myself or see that they were filled better, taken care of.

Q If there was any disciplinary action taken who would do that? A Mr. Foy, or Mr. Graley, one.

Q At that time could you or did you recommend hiring and firing? A No, sir.

Q Whose duties were firing and hiring? A Mr. Foy.

\* \* \* \*

[fol. 190] BERNARD GRALEY

was called as a witness by and on behalf of the Respondent and, after having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Please be seated and give your name and address to the Reporter.

THE WITNESS: Bernard Graley, Madison, West Virginia.

### DIRECT EXAMINATION

BY MR. HOLROYD:

Q Are you the same Bernard Graley who is a supervisor in the Nitro warehouse of Heck's? A I am.

Q Are you familiar with an employee by the name of James E. Goins? A Yes, sir.

Q Did he work under your instructions? A Yes, sir.

Q Is that person presently working with Heck's? A No, sir.

Q When was he discharged, if you recall? A Along about the first of October.

Q Would you explain the events leading up to his discharge? A On this particular morning we sent him out to hose down the driveway, or the driveway around the building, and along in the morning when they came back in—

[fol. 191] Q Let me interrupt you a second. What kind of a hose were they using? A A fire hose.

Q Was it the same size as a garden hose or larger? A No. Two inch, I reckon.

Q All right. A He come up to me and said, "It's pretty chilly, pretty cold. My trousers is wet".

Q Did you notice his clothes? A They was a little bit wet up along in through here, the best I can remember. [Indicating]

Q You are speaking of about eighteen inches off the floor? A Something like that.

Q What else was said? A I don't remember just what else was said there, but I don't believe that I talked any more with him.

Q What did he do then, if you know? A I smelled alcohol on his breath. I don't know whether this—he was drinking that day, that morning, the night before.

Q Had you ever smelled alcohol on his breath before? A Yes.

Q What did he do after that? A Well, I went to the office to report it and Mr. Foy said, "Well, I will be back in a minute".

[fol. 192] Q You reported it to Mr. Foy? A Yes.

Q All right. A Mr. Foy said, "I will be back in a minute", and he went somewhere. I don't know where it was, because I didn't go with him. He come back and he asked me where Goins was at.

Q Where were you while he was gone? A I was in the office.

Q All right. A I said, "Well, he was back in the warehouse here a minute ago." We went to look for him and one of the boys, I don't know who it was, told us that he went home.

Q Did he ask you if he could go home? A No.

Q Did he ask Mr. Foy in your hearing if he could go home? A No, sir. I couldn't answer that.

\* \* \* \*

[fol. 193] Q What was your duty back in October of 1964? A I had been assistant warehouse manager then.

Q Who was the warehouse manager? A Mr. Foy.

Q As assistant warehouse manager were you familiar with the duties of your employees under you? A Yes, sir.

Q Would you state whether or not the warehousemen were under your instructions? A Yes, sir.

Q How about the pricers? A They were.

Q Tell us the difference between the duties of the warehousemen and the pricers. A Actually there is no difference, because pricers, they pull merchandise, they receive merchandise. I mean they take it off the trucks, the same as everybody works as pricers or puller, or whatever you want to call them.

Q Let me give you a name or two. Virgil Searls. He is listed as a warehouseman. Is that correct? A Yes.

Q Tell us what Virgil's duties were. A His duties were to receive merchandise; that is, unload trucks, take the merchandise and put it in stock, price it—

Q What would he do to price it? A He would take a [fol. 194] pink copy, purchase order, and go down and find the item on it, and then mark the price on this carton.

Q He would mark the price on the carton? A Yes.

Q What does Shelia Hostein do? I have here listed here as a pricer. What does she do? A She prices, pulls merchandise, takes care of changing of prices, and shipping merchandise too.

Q Does she load or unload trucks? A No.

Q Other than loading and unloading trucks is there any difference in the duties of Shelia Hostein and Virgil Searles? A No.

Q Is there any difference in the pay? A That would be entirely upon the person himself in their pay.

Q How is that established? A Mostly on time that they have been there, according to how they work. You know, if they are a good worker they get more, you know, increase quicker than someone that does not work.

Q Who supervises the pricers? A I do.

Q Who supervises the warehousemen? A I do.

[fol. 195] Q Who supervised them back in October? A Ray Foy and myself.

MR. HOLROYD: That is all we have of this witness. Thank you very much, Bernard.

### CROSS EXAMINATION

BY MR. MITTENDORF:

Q Mr. Graley, you stated that on the day Mr. Goins went home, did you say that you smelled alcohol on his breath? A Some type of alcohol.

Q Some type of alcohol. Was he drunk? A I couldn't say that.

Q How was he acting? A Well, now, I don't know. Normal, sort of normal.

Q What did he do?

MR. HOLROYD: We will stipulate that the man wasn't drunk on the date of his discharge.

BY MR. MITTENDORF:

Q I believe you stated that you had smelled alcohol on his breath before. Is that correct? A Yes, sir.

Q How many occasions? A One or two.

Q Was Mr. Goins known to be a drinking man? A I couldn't answer that.

Q Could you tell if this was beer or whisky that he had [fol. 196] been drinking? A No, sir.

Q You say this had happened on one or two occasions prior to this? A Yes, sir.

Q When was the last time that it happened? How long before this? A This is to the best of my opinion. When we opened the Civic Center for a sale.

Q How long ago was that, Mr. Graley? A Roughly thirty days or something like that.

Q About thirty days before this incident? A Yes.

Q What kind of condition was he in at that time? A Well, he had a little bit to drink.



Q Did he have a little too much? A No. Not enough, you know, to be staggering or anything like that.

Q Was he doing his work? A Well, partly.

Q Was he working as well as the other employees with him? A I better not answer, because I don't remember all of this.

TRIAL EXAMINER: Was he or wasn't he? If you don't know, say you don't know.

THE WITNESS: I say I don't remember.

[fol. 167] BY MR. MITTENDORG:

Q What did you say to him on that occasion? A I don't believe I said anything to him at that time.

Q You said this happened though on a couple of prior occasions. When was the time prior to that? A I don't remember.

Q Do you remember where it was? A We was at the warehouse.

Q At the Nitro warehouse? A I better not say no dates, because I don't remember about that.

Q Do you remember saying anything to him about his drinking at that time? A I don't remember whether I did or not.

Q Did you report it to anyone? A No.

Q What about the other time at the Civic Center? Did you report that to anyone? A Yes.

Q You reported that to whom? A I believe I reported that to Mr. Darnell. I believe it was Mr. Darnell.

Q Why wouldn't you have reported it to Mr. Foy? He was your immediate supervisor, wasn't he? A He wasn't there the next day.

[fol. 198] Q I believe you stated that you did not discharge Mr. Goins. A No, sir.

Q Who did discharge Him? A I don't know. I couldn't say for sure, because I wasn't with nobody when he was discharged.

Q After you reported it to Mr. Foy you don't know what happened? A No, sir.

Q Was it never discussed with you? A No, sir.

Q Did you recommend his discharge? No, sir. I just reported that he was drinking.

Q I beg your pardon? A I just reported that I smelled alcohol on his breath.

Q At the time you reported that you were aware of the fact that there was a union campaign going on, did you not? A No, sir.

Q You didn't know anything about the union campaign? A No, sir.

Q Did you know that Mr. Jackson had been in the Nitro plant to discuss the union with Mr. Haddad? A No, sir. I didn't.

Q You heard nothing about the union at all? A I heard maybe a year or so before that.

[fol. 199] Q But immediately preceding this you knew nothing at all about the union? A No, sir.

Q It wasn't discussed with you by Mr. Foy, Mr. Haddad, or Mr. Darnell? A No, sir.

Wait a minute now. Well, when we first went to Nitro there was some talk of union activity. But after that it quietened down.

Q When would that have been, Mr. Graley? A That would have been in the last part of July or September.

\* \* \*

Q You were talking about the distinction between pricers and warehousemen and you said that the warehousemen price merchandise. Is that correct? A Yes, sir.

[fol. 200] Q Isn't it a fact that when the warehousemen price merchandise they price the carton rather than the individual items in the carton? A Not necessarily.

Q Do they run the pricing machines? A Yes.

Q The warehousemen do or the pricers do? How much time do the warehousemen spend operating the pricing machine? A I would say fifteen per cent.

Q What percentage of the time do the pricers spend running it. A Everybody prices.

Q The warehouse—

TRIAL EXAMINER: That is now the question. What percentage of the time do the pricers spend on the machines?

○ THE WITNESS: Maybe thirty per cent.

## BY MR. MITTENDORF:

Q What do the pricers do the other seventy per cent of the time? A They are pulling merchandise or putting it in stock, unloading trucks, something of that type.

Q What about your two lady pricers at Nitro? I think Sheila Hostein and Mary Lou Adkins. A They do about everything but unload the trucks and load them.

[fol. 201] Q What percentage of their time is spent on the pricing machine? Not just on the machines, but actually making the tags and tagging the merchandise itself.

A That would be kindly hard to determine.

Q Isn't that essentially their job, to price the individual merchandise? A Yes. But everybody does that, see. Maybe they are off pulling merchandise or maybe putting merchandise in stock.

Q Isn't it true, Mr. Graley, that the work of the pricers is confined to the cosmetics department? A No, sir.

Q Do they price all of the merchandise that comes in? A Yes.

Q What is their association with the cosmetics department specifically? A The cosmetics has their own—we have it set up in a separate group. Cosmetics naturally would have to be. But they have all their pricers, what they call pricers, and pullers. But the rest of the warehouse, the men, they take this merchandise in. They stock it and price it and so on, on the carton.

TRIAL EXAMINER: Price it how?

THE WITNESS: On the cartons.

TRIAL EXAMINER: Who does that?

THE WITNESS: The warehousemen.

[fol. 202] TRIAL EXAMINER: Do they price the individual items?

THE WITNESS: No. Well, now, there is occasions that we do.

TRIAL EXAMINER: Who is "we"?

THE WITNESS: The people in the warehouse. Like hardware, for instance. They have a shipment to come in to be broken down. We have to take all that out, break the cartons open, sort it out into different stores. Then we will mark on these cartons the prices, or the packages or whatever it might be.

BY MR. MITTENDORF:

Q Isn't there a separate area of the warehouse set aside for pricers? Don't they have their own section of the warehouse, a cosmetics section? A Cosmetics. Yes.

FURTHER CROSS EXAMINATION

BY MR. BOWLES:

Q Mr. Graley, do you remember the tenth of October of '64? A Around about that time.

Q That was the day that Goins got wet when he was out on the parking lot hosing it down. A I suppose. Yes.

Q Do you remember the day before a meeting that was held with Heck's in which the employees were called in and [fol. 203] the supervisors were called in about the union? A Not the day before.

Q On October 9. A No, sir. I don't.

Q You were not at that meeting? A Wait a minute. I didn't say I was or wasn't, but I don't remember no meeting.

Q If you don't remember a meeting then you were not— A Yes. Yes. Yes. Yes. I do, too.

Q Tell us about it.

MR. HOLROYD: I object. This meeting is outside the scope of direct examination.

TRIAL EXAMINER: I will accept it for credibility purposes.

THE WITNESS: Wait a minute. I don't say that this is the right date.

Mr. Haddad—wait a minute. I better not comment on that, because I don't remember what—

BY MR. BOWLES:

Q I want you to comment on it and tell us what you remember about it. A That is why I don't comment. I don't remember.

Q Was there or was there not a meeting held on October 9, the day before Goins was fired? A I don't say as I don't remember whether it was the day before.



[fol. 204] Q You spoke of another meeting. Tell us about that.

MR. HOLROYD: I think the man is entitled to complete his answer.

MR. BOWLES: Yes. He is. If he isn't through, he may continue.

THE WITNESS: I don't remember when that was.

BY MR. BOWLES:

Q Tell us about the other meeting that you mentioned that you remembered. A That was about merchandising for the warehouse. We was having quite a bit of breakage, damage of merchandise.

Q You had those kinds of meetings all the time, did you not? A No, sir.

Q You didn't have supervisory meetings? A Only what the warehouse theirself had.

Q To call your attention, and I want to specifically refer to the meeting with the warehousemen, Mr. Haddad, Mr. Darnell, Mr. Foy and I want to know whether or not you were in that meeting? A I better not answer, because I may make a mistake here.

Q Don't you remember it? A I remember a meeting. But I don't remember what it was about.

Q Maybe I could refresh your recollection. This was about union activities of the employees at the warehouse. Does that refresh your memory? A No, sir.

[fol. 205] Q Are you saying there wasn't any such meeting or you don't remember? A I don't remember it being this type of meeting.

Yes. I do. But I don't remember what was said. But I do—let's see. I better not. You better strike that one, because I actually don't remember that, what that was, whether it was or not.

\* \* \* \*

HARRY TURNER, JR.

was called as a witness by and on behalf of the Respondent and, after having been first duly sworn, was examined and testified as follows:

**TRIAL EXAMINER:** Please be seated and give your name and address to the Reporter.

**THE WITNESS:** Harry Turner, Jr.

# **DIRECT EXAMINATION**

[fol. 206] **BY MR. HOLROYD:**

**Q** Mr. Turner, were you the Junior Turner, head of the warehouse department for Heck's? **A** Yes, sir.

\* \* \* \*

**BY MR. HOLROYD:**

**Q** Mr. Turner, do you know a fellow by the name of Sam Nelson? **A** Yes, sir.

**Q** Did you ever have a conversation with him with reference to the union? **A** Yes, sir.

**Q** Would you tell us when it was? **A** Around October 10.

**Q** Where was this? **A** St. Albans.

[fol. 207] **Q** What time of the day? **A** I imagine it was around four or five o'clock.

**Q** What was said? **A** You mean what I said to him?

**Q** What you said to him and what he said to you. **A** We got to talking about the union. I got to telling him the good points that we had at the store and what the company could do if they wanted to. They didn't have to give us a bonus and they didn't have to have these parties for us and stuff like that. I was explaining the good points to him about it.

**Q** What did he say about it, if anything? **A** Well, he told me he had made up his mind.

**Q** Did he tell you how he made up his mind, which way? **A** He said he was going to join.

**Q** Did you say anything to him that you recall? **A** Only about the good points of the company is all.

**Q** Did you make any threats or promises to him as to what would happen if he did or did not join the union? **A** I told him what could happen. The company could cut our raises off, cut it off short, and stuff like that. It was to your own advantages. And our vacations.

Q Let me understand what you are saying. Are you saying that you told him that the company could—

MR. BOWLES: Just a minute. We object to this.

[fol. 208] TRIAL EXAMINER: It is leading.

BY MR. HOLROYD:

Q Do you recall anything else that was said to him, Mr. Turner? A No. I don't.

Q Can you recall anything else that was said? A No, sir.

[fol. 209] BY MR. HOLROYD:

Q Did you tell Mr. Nelson that if the union was voted in that the company would discontinue granting bonuses or reduce the work hours of the employees? A No, I said they could.

Q Did you tell Mr. Nelson that you knew that he and another man, Mr. Woodall, had signed union cards for the union? A Read that again, I didn't understand it.

Q Did you tell Mr. Nelson that you knew that he and Woodall had signed union cards? A Yes, sir.

[fol. 210] Q You told him that? A Yes, sir.

FRED HADDAD

was called as a witness by and on behalf of the Respondent and after having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Please be seated and give your name and address to the Reporter.

THE WITNESS: West 19th Street, Nitro, West Virginia. Fred Haddad.

DIRECT EXAMINATION

BY MR. HOLROYD:

Q Are you the President of Heck's? A Yes, sir.

Q Do you know an employee by the name of Ivan Vick-  
[fol. 211] ers? A Yes, sir.

Q Directing your attention to a date sometime around the last of October, did you have occasion to discuss with Mr. Vickers his duties and responsibilities and rate of pay in your office? A Yes, sir.

Q Was the union discussed at that time? A No, sir.

Q Tell us what you said to Mr. Vickers. A I discussed with Mr. Vickers—he used to be head of our warehouse on Lewis Street and he was transferred down to Nito as head shipping clerk. Mr. Darnell and Mr. Ellis discussed him with me a couple of days before I called him in the office, that he was a good man and that we should give him a raise and put him on salary as head of the shipping department. That is what we discussed.

Q You testified that he was already head of the shipping department? A Yes.

Q Directing your attention over to General Counsel's table here, do you recognize Mr. Jackson? A Yes, sir.

Q Has Mr. Jackson ever been in your office? A Yes, sir.

Q Can you tell us approximately when? A It was in [fol. 212] the fall. But the exact date—

Q Was he in there more than once? A Not in my office.

Q Tell us about the events that occurred while he was in your office. A He came in and introduced himself and he showed me some cards and he said he represented a majority of our employees.

Q He said what now? A That he represented a majority of our employees. He sat these cards on my desk and Ivan Vickers' was on top of the list of cards.

Q Before you get on, I want to show you some cards here and ask you if this stack, which constitutes all of General Counsel's union card exhibits, is that approximately what he showed you? A The amount I couldn't say. But the stack was just like that.

Q Was this the same type of general card, size and description and the like? A Yes.

Q You say Ivan Vickers name was on top? A Yes, sir.

Q What did you do, if anything, after that? A I



picked the cards up. Then I didn't look at the cards and I called Mr. Darnell in my office, Ray Darnell.

[fol. 213] Q You didn't look at them? A No, sir. I looked at the top card. I flipped the cards and handed them to Mr. Darnell.

Q What do you mean? A Flipped through them.

Q Did you look at them? A Just the corners of them.

Q Then what happened? A Mr. Darnell probably looked at the top card too and put them back on the desk.

Q Did anything happen after that? A Not that I can recall.

Q You say Ivan Vickers' name was on top? A Yes, sir.

Q Did you do anything with reference to Ivan Vickers? A No. I was surprised, him being a supervisor, that he had signed a card.

Q Was anybody else in the room there at that time or not, or later? A While Mr. Jackson was there?

Q Yes. A I don't recall. I don't think so. Mr. Ellis might have come in. I don't recall.

I think Mr. Vickers came in there while Mr. Jackson was there. I asked Mr. Jackson if I could call Mr. Vickers in and ask him if he signed a card. He said, "Yes."

I asked Mr. Vickers to come in. I asked him if he signed a card and he said "yes".

Q Why did you call Mr. Vickers in? A For him being a head of the shipping department and a supervisor I just couldn't feel like he would sign a card, because he was a good worker and being a supervisor.

[fol. 217] BY MR. MITTENDORF:

Q You referred to Ivan Vickers on several occasions as being a supervisor. Isn't it correct that Mr. Vickers at that time was on an hourly basis, Mr. Haddad? A Truthfully I don't know. That is not in my department.

Q Isn't it a practice at Heck's to have its department heads and supervisors on a salaried basis? A Yes, sir.

Q Isn't it also true that Mr. Vickers worked along with the other employees? He loaded and unloaded trucks, moved merchandise, and that sort of thing? A Not to my knowledge. But he might have.

\* \* \*

[fol. 218]

## FURTHER CROSS EXAMINATION

BY MR. BOWLES:

Q Mr. Haddad, when Mr. Jackson came into your office he came there for the purpose of getting you to recognize the Teamsters Union for the warehousemen at the St. Albans, Nitro, and Charleston warehouses. Is that correct?

A He came there to be recognized. Yes, sir.

Q You refused to recognize him. A I think I gave him the words "No comment".

Q You didn't agree to recognize the union, did you?

A I didn't come out and agree to it. No, sir.

Q There were no further meetings held between you and Mr. Jackson that day, were there? A No, sir.

Q You refused to recognize the union or made no comment without even counting the number of cards that he give you. Is that correct? A I know the number of [fol. 219] cards didn't represent half of my employees.

Q I thought that you had said, and maybe I misunderstood you, that you only looked at the top card. A Yes, sir.

Q So then you didn't count them? A No, sir.

Q So you don't know how many he had at that time?

A I know I have got more employees than he brought in there.

Q But you don't know how many? You were not interested enough to count them? A No, sir.

\* \* \*

[fol. 224]

RAY DARNELL

was called as a witness by and on behalf of the Respondent and, after having been first duly sworn, was examined and testified as follows:

**TRIAL EXAMINER:** Please be seated and give your name and address to the Reporter.

**THE WITNESS:** Ray Darnell, 5102 Frederick Drive, Charleston, West Virginia.

**DIRECT EXAMINATION**

**BY MR. HOLROYD:**

**Q** Are you the Ray Darnell in charge of operations and personnel for Heck's, Inc.? **A** Yes, sir.

[fol. 228] **BY MR. HOLROYD:**

**Q** Mr. Vickers, was he on salary when he was in charge of the Lewis Street warehouse? **A** No, sir. He was on an hourly rate.

**Q** How did his responsibilities differ from when he moved from the Lewis Street warehouse to Nitro? **A** He was in complete charge of the Lewis Street warehouse in both receiving and shipping. When he was brought to the Nitro warehouse his duties were in charge of shipping.

**Q** Why wasn't he in charge of the whole warehouse? **A** Because the warehouse was about three times larger in Nitro than it was at Lewis Street. We felt the need [fol. 229] for breaking down the responsibilities. We had one warehouse manager in charge of the complete warehouse and we broke it down into shipping and receiving under the warehouse manager.

**Q** Who was in charge of shipping? **A** Mr. Vickers.

**Q** How many employees did he have under him? **A** It varied. It depended on the business that we had, what the amount of merchandise we had to ship other places was. If the outgo was heavy then they would change boys from the receiving line over to the shipping line.

**Q** Normally approximately how many would he have under him? **A** Approximately five or six.

**Q** Who would he be responsible to as far as those five or six employees? **A** He would be responsible directly to the warehouse manager.

**Q** Did anyone else given them instructions, the five or

six employees? A Not unless they were transferred over into receiving. Then Mr. Graley was responsible.

Q Did you tell Mr. Vickers what his responsibilities were as shipping clerk? A Yes. They were explained to him.

Q What did you explain to him? A That his duties were, as the transfers were written up, to pull the merchandise and see that it was properly checked and properly shipped to our various stores.

[fol. 230] Q In reference to the employees, what was his instruction, if any? A There was no definite instruction as to the employees. He was to be assigned employees by Mr. Foy.

Q Do you know whether Mr. Vickers ever recommended anybody to be hired or fired? A He hired men when he was at the Lewis Street warehouse.

Q I think the document in evidence shows that Mr. Graley was the receiving clerk. A Yes, sir.

Q Was Mr. Graley over Mr. Vickers? A No, sir. Not directly.

Q Who did Mr. Graley report to? A Mr. Foy.

Q Who did Mr. Vickers report to? A Mr. Foy.

Q Mr. Foy reported to who? A To myself.

Q Was there anyone between Mr. Vickers and the five or six employees that were under him? A No, sir.

Q Was there anyone between Mr. Vickers and Mr. Foy? A No, sir.

Q Did Mr. Foy actively instruct the employees under [fol. 231] Mr. Vickers as to their day-to-day duties? A Not to my knowledge. He should have passed it on through the chain of command to Mr. Vickers and he should have handed it down.

Q Did you participate in the meeting alluded to by Mr. Haddad in reference to placing Mr. Vickers on salary rather than on an hourly basis? A Yes, sir.

Q Was Mr. Vickers present at that time? A Not at the time it was discussed, he wasn't. It was discussed by Mr. Haddad, Mr. Ellis and myself.

Q Who suggested the increase or the change? A I suggested that he go on salary. Normally the procedure on a salaried person, I get the okay through Mr. Haddad



to put a person on salary. It was discussed at that time by Mr. Ellis and myself.

Q Why was he not placed on salary before this? A That is a good question. I have no answer to that. Actually when he was working at Lewis Street he had been there not too long. He had not been working on an hourly basis. We had given him an increase over the rest of the employees to take care of the warehouse. But there just had been no—we had just neglected to put him on salary.

[fol. 232] Q Did he receive any benefits that the rest of the employees didn't receive? A The only benefits he would receive would be attending our supervisors' meeting.

Q You mean only supervisors attend supervisors' meetings? A No, sir.

Q Did the supervisors in the warehouse attend all of the supervisory meetings? A No, sir. Not at all times.

Q Why was that? A Once a month we have what we call a department head or supervisors' meeting to bring all the department heads or supervisors from each store into the main office and have a general meeting.

There are occasions when we don't bring the head of the cashiers from each store, or there are times when we feel we have no need for the head of the warehouse or supervisors of the warehouse to be brought in. It is up to our own choosing.

Q Mr. Vickers here has testified earlier that he attended the supervisory meeting in September. He has testified he did not attend the supervisory meeting in October and November. Can you explain why he did not attend those meetings? A I would imagine it was because we were so busy in our stores and warehouses that we tried to bring in those fellows to; that is, we tried not to bring [fol. 233] them in. We were going through our busiest time of the year. So we tried to keep as many people in the store as we could. In fact, in December we didn't have a general meeting for anyone.

Q That is, I assume, because of the Christmas rush.  
A Yes.

Q Tell us the difference between a pricer and a warehouseman or warehousewoman. A There actually isn't [fol. 234] too much difference as far as the general warehouseman and a person we consider as a pricer. The warehousemen, if we are busy in the area where we are pricing, fit right in and help with the pricing. Each one of them, uness they are female, will unload and help load the trucks. They will stock merchandise in the shelves and so forth. General warehouse work.

Q Why the difference in names? A We just set them up that way for our own records.

Q Why, for example, do you have a male employee that is called a pricer and another male employee that is called a warehouseman? A I suppose when we set that up that way in our warehouse, we do have our warehouse broken down, not into two categories, but we have our cosmetics department, which is set aside in one area of our warehouse, and our pricers as we classified them were working out of the cosmetics department. However, their duties were pricing merchandise, stocking merchandise in the shelves, loading and unloading merchandise.

In our cosmetics we have that a little different from the general warehouse. In fact, that is set up on a control. They are all control sheets. We have order forms that come directly from our stores. The merchandise is lined up in the order that the merchandise is on our floor in our warehouse so that the orders are easily pulled, which are the duties of the pricer working in that department.

[fol. 235] TRIAL EXAMINER: Are the cosmetics employees in your warehouse your employees or are they by any chance the employees of the concessionaire?

THE WITNESS: No, sir. We have no concessionaire.

MR. HOLROYD: I didn't hear the question.

TRIAL EXAMINER: I want to know whether they were employees of the company or whether there was a concessionaire in here.

BY MR. HOLROYD:

Q Is there any transfer of employees between pricers and warehousemen? A Yes. As I stated before, if they are busy pricing merchandise and they are not receiving

or shipping merchandise, then we send the regular crew over to help them price. Or vice versa. If there are people that are setup for pricing who are not busy we send them to help unload trucks. It is all very flexible.

Q Do you have a person as head of the department that does the cosmetics? A No, sir. That comes under the warehouse supervisor.

Q Are the items that go into the cosmetics department separated physically when they come in and go out from the other warehouse items? A They are separated physically from the other merchandise that comes into the warehouse. Yes.

[fol. 236] Q Do the warehousemen handle or do any work with them? A Yes. The warehousemen load and unload the trucks as they are distributed to the other stores.

Q This is in the warehouse. Is the situation any different in the warehouses in the St. Albans and Charleston stores as you described in the general warehouse? A No. They are the same. All the duties are basically the same thing, shipping, receiving and merchandising; that is, merchandise pricing.

Q Is there any difference in salary of the pricers and warehousemen? A No, sir.

Q Are there any benefits that one gets that the other one doesn't get? A No, sir.

\* \* \* \*

BY MR. HOLROYD:

\* Q Mr. Darnell, did you participate in any discussion [fol. 237] with Mr. Vickers in reference to a raise? A Yes, sir.

Q Approximately when did this occur? A Sometime in the latter part of October.

Q Who was there? A Mr. Haddad and Mr. Ellis and myself and Mr. Vickers.

Q What was said? A To my knowledge Mr. Haddad called him in and told him we were giving him an increase in pay—

MR. BOWLES: We object to his knowledge. He either heard it or he didn't hear it.

TRIAL EXAMINER: Did you hear it or didn't you?  
 THE WITNESS: Yes, sir. I heard it.

BY MR. HOLROYD:

Q Continue telling us what you heard. A That he was giving him an increase because Mr. Ellis and I had been talking to him about it and telling him that he was a good worker and that he deserved to be put on a salary.

Q Did his duties increase as a result of that? A No, sir. His duties remained the same.

Q Was anything said about the union, that you recall?  
 A Not to my recollection. No, sir.

[fol. 241] Q Mr. James Goins; did you participate in anyway in the discharge of him? A Yes, sir.

Q Tell the Court what your participation in that was. A Mr. Foy came to me on the Saturday morning in question, stating that Mr. Goins left the job without permission, without notifying anyone, and also that Mr. Graley had reported to him that he could smell alcohol on his breath and asked me what steps I thought should be taken.

I suggested that we release him. He was on probation at the time, so we felt that we couldn't afford to have anyone around in our organization unless they were going to work with us and work for us.

Q You say he was on probation. Do you have a probationary period? A Yes, sir.

Q What is that? A Ninety days.

Q Who made the determination to discharge Mr. Goins? A I did.

[fol. 244] CROSS EXAMINATION

BY MR. MITTENDORF:

Q Mr. Darnell, is there any contention that Mr. Goins was a supervisor? A No, sir.

Q Mr. Vickers, up until the time of the change in November, was on an hourly rate, was he not? A That is correct.



Q Do you know what his hourly rate was? It has been testified that it was \$1.50. A I believe it was \$1.50 an hour. I am not positive. \$1.50 or \$1.55.

Q Is it true there were also other individuals in the warehouse department receiving rates of pay commensurate with that? A No, sir.

Q What was Mr. Nichols getting? A Mr. Nichols was working in the warehouse at St. Albans. I think he was making \$1.40 or \$1.45 an hour.

Q Are you sure it couldn't have been \$1.55. A I wouldn't swear to it under oath. However, Mr. Nichols [fol. 245] had been with the company since the St. Albans store was opened, which would have had some bearing on what he was making at that time.

\* \* \*

[fol. 248] Q With respect, Mr. Darnell, to Mr. Vickers hiring people when he was at Lewis Street, did he hire these people independently of you? A Yes, sir. Let me clarify that just a little bit. I would suggest to him that he needed more employees to help him with his work there and ask him if he could hire someone to take care of that.

Q The point I am trying to make, the actual decision to hire someone else was yours and the selection was left [fol. 249] to Mr. Vickers. Is that correct? A That is true. However, that was true in the case of the Nitro warehouse with Mr. Foy or any other supervisor we had. The only person in our organization besides myself who can hire a person is the store manager.

\* \* \*

Q Were you present at the time Mr. Foy talked to him about his discharge? A No, sir.

Q Had you instructed Mr. Foy what to tell Mr. Goins? A No, sir. We discussed releasing, but we didn't discuss exactly what he would say to release him.

\* \* \*

[fol. 251]

## REDIRECT EXAMINATION

BY MR. BOWLES:

Q You say, Mr. Darnell, that you have people who are supervisors working for you who are making less than employees who are not supervisors? A We do have in some cases. Yes, sir.

Q How does this come about? A We find someone that we promote as the department head faster than the ordinary person. Maybe we don't accompany with the pay.

[fol. 252] We have in our Ashland store, for instance, a girl who is head of the cosmetics department that is not making as much as, for instance, you might use Mr. Nichols as an example. She has not been with the company, however, as long.

It is rare, but we do have those cases.

Q Do you have a rule that supervisors must receive more than the employees? A No, sir.

\* \* \* \* \*

[fol. 255]

RAY DARNELL

was recalled as a witness by and on behalf of the Respondent and, after having been previously duly sworn, was examined and testified further as follows:

## DIRECT EXAMINATION

BY MR. HOLROYD:

Q Do you know where Ray Foy is? A No, sir. I don't.

Q Have you made any effort to try to reach him? A Yes, sir. We have tried to get hold of him. I understand he is in Florida. When he left the company he told me he was going to Florida to work.

Q What were the circumstances of him leaving the company, briefly? A He was dismissed.

\* \* \* \* \*

[fol. 257]

IVAN L. VICKERS

was recalled as a witness by and on behalf of the National [fol. 258] Labor Relations Board and, after having been previously duly sworn, was examined and testified further as follows:

## DIRECT EXAMINATION

BY MR. MITTENDORF:

Q Mr. Vickers, there was testimony in this proceeding by Mr. Darnell that Mr. Graley was not your supervisor at the Nitro warehouse. Is that true or false? A I would say false, sir.

Q Did you take orders from Mr. Graley? A Yes.

Q What was the nature of the orders you took from him? A He might have certain merchandise going to a certain store and it was written up on transfers. He would bring the transfers to me and tell me to fill these for this store and load it on a certain truck and have me to get someone to help me do it.

Q What you have just said with respect to yourself, did that apply to other employees at the store? A Yes, sir. He has done others the same way.

Q Who, specifically? A I can name Charles Ferrell and James Goins, and practically at one time or another everyone in the warehouse.

MR. MITTENDORF: That is all.

## CROSS EXAMINATION

BY MR. HOLROYD:

A Are you saying, Mr. Vickers, that Mr. Graley would bring these orders to you and tell you who to pick to load [fol. 259] the trucks? A No, sir. He would tell me to get someone to help me.

Q Who would make the determination as to who you would get to help you? A I would get someone to help me.

Q You would go up to the men and you would tell them you wanted them to help and what you wanted them to do?

A Anyone of them that wasn't busy.

## REDIRECT EXAMINATION

BY MR. MITTENDORF:

Q Would the other employees do the same thing? Would they also have people— A Yes, sir.

Q Have you on occasions been asked by others to help? A Yes, sir.

MR. MITTENDORF: That is all.

## RECROSS EXAMINATION

BY MR. HOLROYD:

Q Are you telling me Mr. Goins came up from time to time and instructed you to do work? A If he had the orders and I wasn't doing anything. Yes, sir.

MR. HOLROYD: That is all.

## FURTHER REDIRECT EXAMINATION

BY MR. MITTENDORF:

Q Would you instruct these men to help you or would you request them to help you? A I would say request, because I wouldn't get anyone unless they didn't have any [fol. 260] thing to do. If they were busy I would do it myself until someone was through with their other job.

MR. MITTENDORF: That is all.

## FURTHER RECROSS EXAMINATION

BY MR. HOLROYD:

Q Was this the same situation over at the Lewis Street warehouse? A No, sir. Over there I requested them, because I was the warehouse manager.

Q You would request them to do it over at the other place? A Yes, sir.

MR. HOLROYD: That is all.

\* \* \* \*



[fol. 263]

Senate Chambers  
State Capitol Building  
Charleston, West Virginia  
Tuesday, November 15, 1966

[fol. 270]

LARRY WOODALL,

a witness called by and on behalf of the General Counsel, being first duly sworn was examined and testified as follows:

TRIAL EXAMINER: Please be seated and give your name to the Reporter.

THE WITNESS: Larry Woodall, No. 2 Swans Court, St. Albans, West Virginia.

#### DIRECT EXAMINATION

BY MR. MITTENDORF:

Q Mr. Woodall, how long were you employed by Heck's? A I think around two years and two months.

Q How long ago did you leave there? A I left there [fol. 271] April 26th, 1964.

Q '64? A '65.

Q Because you were there at the time the Union campaign was going on? A Yes.

Q And at what branch of Heck's were you employed? A St. Albans store.

Q What was your position at St. Albans? A Truck driver.

Q And who was your immediate supervisor? A Albert Ferrell.

Q And what section of the St. Albans store did you work in? A In the stock room.

Q Is that also known as the warehouse? A Yes.

Q And would you describe for the Trial Examiner the location of the stock room or warehouse in relation to the store? A Well, it was on the rear of the store.

Q Was it separated from the store? A No; it was part of the same building but it was separated by a door that you went through when you left the store.

Q Was there a partition between the store and the [fol. 272] warehouse? A Yes.

Q What would your estimate of the size of the store be? A Thirty-eight thousand square feet, approximately.

Q Can you tell us in feet, by width and length, approximately? This does not have to be an exact figure.

A Two hundred foot across the front, I imagine.

Q How deep? A Maybe 300 or better; I don't know.

Q All right. Now, what was the size of the warehouse area? A It ran the length of the store on the back.

Q The length or the width, sir? A The width.

[fol. 273] Q Who were the employees that you worked with in the warehouse area? A Samuel Nelson; Evelyn Taylor.

Q Do you recall any others? A Everette Nichols.

Q Do you recall Wayne Baker? A Yes; Wayne Baker.

Q Now, you mentioned an Evelyn Taylor. A Yes.

Q Did Evelyn Taylor's duties differ from those of yourself, Mr. Nichols and Mr. Baker? A Yes.

Q To what extent? A She priced clothing and she [fol. 274] stayed in one separate area and we did stock work; unloading trucks, stock merchandise.

Q What department was she concerned with? A Clothing Department, on the floor.

Q What work would you do, you and the others who worked with you, on shipments that came in for the Clothing Department? A We would take it to their section to be priced.

Q Would you have any other contact with this merchandise? A She did the pricing.

Q Now, with respect to the selling personnel who work in the store area, do they have any regular duties in the warehouse? A No.

Q Do they come back into the warehouse area? A Sometimes they would price merchandise in the warehouse area.

Q What were their duties, essentially? A Selling.

Q What percentage of their time did they spend on the floor of the retail area?

[fol. 275] THE WITNESS: I don't know.

BY MR. MITTENDORF:

Q Now, with respect to Evelyn Taylor, what percentage of her time did she spend in the warehouse?

MR. HOLROYD: Object; he's already stated he didn't know.

MR. MITTENDORF: No, he didn't. He stated he didn't know insofar as the selling employees came into it.

TRIAL EXAMINER: I will overrule your objection.

BY MR. MITTENDORF:

Q How often was Evelyn Taylor—strike that—what percentage of Evelyn's time did she spend in the warehouse? A Most of her time was spent back there.

Q Percentage-wise, what would it be, approximately?

A Maybe seven-eighths of her time.

Q And where would she spend the balance of her time?

A On the floor.

[fol. 276] Q And what would she do on the floor? A Sell, stocking.

Q In what departments? A Clothing Department.

Q Was it always the Clothing Department?

BY MR. MITTENDORF:

Q Have you on occasion seen Mrs. Taylor working on the floor? A Yes.

Q And how frequently have you seen her there? A I don't know; I'm not sure of that.

Q Well, would you see her there some time every day?

A Not every day; three days a week.

Q Would she sometimes be there over long periods? A No.

[fol. 277] Q How long would she be there? A An hour, maybe.

Q From whom did Mrs. Taylor receive her orders, if you know? A Clothing Department head.

Q Have you ever known Mr. Ferrell to give orders to Mrs. Taylor? A No.

BY MR. MITTENDORF:

Q Did Mr. Ferrell give all of the other warehouse employees their orders? A Yes.

Q Do the selling personnel wear a prescribed uniform or dress in a certain manner? A Yes.

Q What is that—for the men and the women? A Smocks for the women; white shirt and tie for men.

Q In addition to the smocks, do the women wear any kind of identifying badges? A Yes.

Q Would you describe those? A Small badge with [fol. 278] "Heck's" and their last name on it.

Q Does it have their department on it? A I don't know.

Q Now, did Mrs. Taylor wear such a smock in the warehouse. A She wore a smock; yes.

Q What is the approved dress for male employees on the selling floor? A White shirt and tie.

Q All right. What did the warehouse employees wear? A Casual work clothes.

[fol. 288] TRIAL EXAMINER: Now, what is your position with respect to Nitro prices? Should they or should they not be included in the unit?

MR. MITTENDORF: I am going to develop their duties in the course of this proceeding.

TRIAL EXAMINER: What is your contention?

MR. MITTENDORF: It appears that they are essentially warehouse employees and as such should be included.

MR. HOLROYD: We will stipulate to that.

TRIAL EXAMINER: All right.

MR. HOLROYD: In fact, we would propose the stipulation that the pricers in the warehouse be included as warehouse employees properly within the unit as described in the, as described by the Board in the Exhibit.



**TRIAL EXAMINER:** At Nitro?

**MR. HOLROYD:** At Nitro.

[fol. 289] **TRIAL EXAMINER:** So I will accept this stipulation as it applies to the pricers at Nitro and that's one thing we don't have to worry about, that they are deemed by all the parties at Nitro, pricers are deemed by [fol. 290] all parts to be included in the unit.

[fol. 291] **MR. HOLROYD:** Your Honor, I believe we stipulated at the last hearing that Albert Ferrell and Henry Overton were supervisory, within the meaning of the Act.

### CROSS-EXAMINATION

**BY MR. HOLROYD:**

[fol. 292] **Q** What were you doing there? Give a typical day. **A** I was hauling freight from the warehouse to the St. Albans store.

**Q** That is one thing you did. What else did you do? **A** I was working in the stock room, pricing, loading trucks.

**Q** What did you do? **A** We would mark the price on the outside of the carton.

**Q** Is it small individual packages that the customer saw? **A** No, the large cartons.

**Q** Now, this is inside the St. Albans warehouse; right? **A** Yes.

**Q** What cartons did you mark? Say a box had fifteen items; did you mark all the items? **A** We would mark the box.

**Q** My question said the box had fifteen items. Would you mark the box or fifteen items. His answer was "We would mark the box."

Would all employees in the warehouse mark the box? **A** [fol. 293] I think sometimes they did mark smaller items out of the box."

Q Now, would this be such employees as Samuel Nelson and Everett Nichols? Would they mark the small boxes, too? A Yes.

Q When—and this is what you refer to as pricing; is that correct? A Yes.

Q Now, would you ever take these items out on the floor, take a box of items out and put it down on the floor? A Yes.

Q Would other warehouse men do this? A Yes.

Q What would you do when you have taken a box of items on the floor? A We would set it on the floor and the clerks would take over.

Q Did you ever take it off and put it on the shelves? A Not that I know of.

Q Did you ever do that? A No.

Q Do you know if any of the other warehouse people did? A I don't know.

Q Who gave you instructions from time to time? A [fol. 294] Albert Ferrell.

Q Did Albert Ferrell give the other employees, such as Nelson and Nichols, instructions also? A Yes.

Q How much time did you spend in the warehouse? A Three or four hours a day.

Q Outside of driving your truck. A Three or four hours a day.

Q Would Mr. Ferrell give Evelyn Taylor any instructions? A No.

Q You never heard him give any? A I never heard him give any.

Q How was she set up back at the warehouse department? You testified that she spent seven-eighths of her time in the warehouse. A Yes.

Q Now, what would she do, as you observed it, when she would go back in the warehouse? A She would price clothing.

Q Is that all, just clothing? A That's all; that's all.

Q Would she take the clothing out and put it, give it to the Clothing Department, or did you ever notice her do that? A Yes.

Q Did you ever hear anybody give her instructions, [fol. 295] tell her what to do? A The Clothing Department did.

Q And who was that? A Smith, I think.

Q What did Smith say? Was it a woman or a man?  
A Man.

Q What did Smith say when he talked to her? Tell us the time that you heard it. A He would tell her the prices and the items that he wanted priced.

Q Did he come back into the warehouse and give her these instructions? A Yes.

Q Did you ever go over and help her price clothing?  
A No; I helped her unpack cartons.

Q You helped her unpack cartons. Did any of the other employees, such as Nelson or Nichols, go back and help her unpack cartons or clothing? If you know. A I don't know.

Q Now, when you were working out on the floor, you say you spent seven-eighths of your time on the truck and one-eighth of your time out on the floor—tell us what you would do when you were out on the floor. A Mop the floor.

Q What else? A I have helped arrange displays, [fol. 296] move the counters around and such.

Q Help put items on the shelf and move them from one place to another and things of that nature? A I don't know.

Q You don't know. Do you recall ever having done that? A No, I don't.

Q How about these other people, Nichols and Nelson; did they ever come in the store to do any type of work?

A Well, yes.

Q Would you say they did more or less than you did?  
A More.

Q How much more would you say? A I don't know.

Q And what would they do when you were in there? Tell us what you heard. A Mr. Nichols would mop around the snack bar; that was in the bar, in several areas. He cleaned.

Q Would he do anything with the stock, help move the stock around or adjust the shelves? A I don't know.

Q You don't know. How about Mr. Nelson; did you ever observe him in the store? A Yes.

Q What would he do when you saw him in there? A [fol. 297] He built displays several times, stocked merchandise in them.

Q Stocked merchandise in displays.

Now, did you say that you wore casual clothes? A Yes.

Q Did you have a little thing stuck in your pocket that had "Heck's" name on it, where you put your pencils down in it, on your clothes? Did you have one of those? A I never wore one.

Q Were you given one to wear? A I think so; yes.

Q Did the other employees wear them? A Yes.

Q Now, you say Evelyn Taylor had a smock on? A Yes.

Q She has the same kind of smock the other floor employees had? A Yes.

Q She was the only female employee back in the warehouse; is that correct? A Yes.

Q Would you say it would be a fair statement that all female employees in the store, in the St. Albans store wore these smocks? A Yes.

[fol. 298] Q These are green smocks, aren't they? A Blue.

Q All female employees wore them? A Yes.

Q Who did most of the pricing in the St. Albans store; individual items? A Store clerks.

Q The selling clerks.

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: Back on the record.

BY MR. HOLROYD:

Q Larry, have you ever seen the clerks in the store back in the warehouse? A Yes.

Q What did they do when they came back there? A Price merchandise; bring customers back to show them the merchandise.

Q Anything else? A No.

Q Do they ever carry merchandise from the warehouse out into the selling store? A Yes.



Q Do you have any occasion where warehouse personnel would move in to take over the duties on the selling [fol. 299] floor as a clerk, selling clerk? A Yes.

Q Do you know of any occasion where a selling clerk would come back and take over the duties in the warehouse department, as a warehouse employee? A Yes.

## REDIRECT EXAMINATION

BY MR. MITTENDORF:

Q With respect to the pricing that you did, Mr. Woodall, was this essentially carton pricing only? A Yes.

Q Who would price the individual items within the carton? A Store clerks.

Q And I believe you said that you have on occasion marked some individual prices? A Yes.

Q How frequently did you do that? A I don't know.

Q Well, did you do some individual pricing every day? A No.

[fol. 300] Q Did you do some carton pricing every day? A Some days I didn't.

Q Well, was this usual procedure when you did individual pricing? A No.

Q What—you said essentially you do carton pricing. Now, under what circumstances do you do individual pricing? A Like, sometimes they would have a sale and clerks would be behind in their merchandise.

Q Oh, well, then, you did not ordinarily do individual pricing? A No.

Q I see. Then the only time you did individual pricing was sale time or something like that? A Yes.

BY MR. MITTENDORF:

Q Is that the only time you did it, when there was sales or something like that? A Sometimes we would help the clerks out.

Q You said that there were occasions when you helped [fol. 301] Evelyn Taylor unpack; is that correct? A Yes.

Q What were the circumstances when you would do so? A She would have clothing cartons too heavy to move around or something.

Q All right.. And how frequently did this happen, that you helped her with merchandise? A I don't know.

Q Was this just a matter of giving her a lift for a few minutes at a time? A Yes.

Q Now, the work that you did on the floor; you said that you were out sometimes. You said you mopped floors and you moved tables and racks, I think you said. A Yes.

Q And you built displays? A Yes.

Q Was your floor work essentially physical work? A Yes.

Q Now, you also said that the clerks, the selling clerks did some pricing in the warehouse; is that correct? A Yes.

Q Now, would they price individual items? A Yes.

Q And would they work from boxes which you had [fol. 302] previously priced or other warehouse employees had priced? A Yes.

Q Now, you said that customers sometimes got back in the warehouse. Was the warehouse actually open to members of the public? A No.

Q And when the customers did so, did come back, would they always be accompanied by someone from the selling floor? A Yes.

Q Now, you also mentioned that on occasion warehouse employees did some selling. What were the circumstances under which warehouse employees would sell? A I only remember one occasion, for myself.

Q I see. What was that occasion? A The store manager wanted some of the warehousemen to come in in white shirts. I worked maybe, I just worked on the floor and they told me I had to get in my truck and go to Nitro and pick up my freight.

Q I see. So you just walked on the floor and off, and so this was just a few minutes? A I didn't sell anything.

Q But you were on the floor with a white shirt and tie on? A Yes.

. . . .

[fol. 303]

## DOYLE THORNTON

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Please be seated and give your name and address to the Reporter.

THE WITNESS: Doyle Thornton, and I am from Griffithsville, West Virginia.

## DIRECT EXAMINATION

BY MR. MITTENDORF:

Q Mr. Thornton, you were formerly employed at Heck's; is that correct? A Yes, sir.

Q And you were at the Charleston, West Virginia, location? A Yes.

Q And how long did you work for Heck's? A I worked approximately two years.

[fol. 304] Q How long did you work in the warehouse? A The whole two years.

Q The whole two years. And I believe you worked under the immediate supervision of Mr. Overton; is that correct? A That's right.

Q Now, who were the employees that you worked with at Charleston? A I worked with Charles Ferrell and Ed Hugert, and I think a Bob Cantley.

Q Now, with respect to Mr. Cantley, didn't Mr. Cantley come over before the Union campaign or leave before the start? A I—yes, he came about two weeks after, I believe.

Q Was there anyone else who worked in the warehouse at Charleston? A There was a Miss Ernestine Russe. She was a pricer.

Q What department did Miss Russe work in? A She was under the direction of the supervisor of the Clothing Department.

Q And who was that? A I think Miss Pearl White was the head.

Q Will you describe the duties of yourself and Mr.

Ferrell and Mr. Hugert? A Our duties were mainly unloading trucks and checking in merchandise.

Q Did you spend any time on the sales floor at Charles-  
[fol. 305] ton? A The only time we had been on the sales floor was when we took merchandise out there.

Q When you took merchandise out there, what would you do with it? A We just took it out and left it.

Q Where would you leave it? A In the department where the merchandise went?

Q When you said "left it", would you leave it on the floor or racks or what? A We left it on the floor.

Q Now, with respect to Miss Russ, what were her duties? A Well, mainly she was a pricer. She priced clothing; specifically clothing.

Q Did she price anything else? A I can't recall anything else that she priced.

Q Where was she located in the warehouse? A She had her own area there in the warehouse. It was partitioned off from the rest of the warehouse, just a doorway leading from the warehouse and where she was.

Q I see. When clothing items came in on the truck, would you unload them? A Yes, sir; I did.

Q Would Mr. Hugert also and Mr. Ferrell? A Yes, he did.

[fol. 306] Q Now, when these clothing items came in, what would you do with them? A We usually took them off the truck and wheeled them in to Miss McGraw, Miss Russe. McGraw was her name before she was married.

Q Would you have any other contact with these clothing items before you had delivered them to her section? A Well, sir, after she had priced them, at times we would get the merchandise after she priced it and take it on the floor.

Q You say "at times" you would. Did you usually move the clothing after she priced it? A Well, sometimes the clothing department came back and got the merchandise and took it out.

Q Which would happen the more frequently, that you would take it out or— A Well, I would say actually that the more frequently the Clothing Department came back and got it.



Q Now, were items—when you unloaded items other than clothing, for example, hardware or sporting goods, what would you do with those items? A Well, most of the time after we unloaded them we checked it in and we either priced this stuff individually or priced the master carton.

Q How did you price it? What was the physical means [fol. 307] of pricing? A Well, most usually we priced it by marking the master carton; you know, the price on the carton.

TRIAL EXAMINER: What would you use—a pencil?

THE WITNESS: Marking pencil.

TRIAL EXAMINER: Marking pencil. All right.

BY MR. MITTENDORF:

Q Under what circumstances would you price individual items? A Well, at times we got in large hardware orders, I don't know, and there was a lot of individual items and at times we would price those before we put them on the floor; mostly large hardware orders.

Q Well, if your hardware items came in packed several to a box, would you individually price them? A Most of the time we just marked the carton, but at times we probably have priced individual items.

Q Did the sales people who worked on the floor have any regular duties in the warehouse?

TRIAL EXAMINER: Hold the phone.

Would you mark that in your notes? I want to get some more on this pricing, for my own information.

Now, this person who priced the clothing, you say he priced the clothing in a separate room?

THE WITNESS: There was a partition in between the warehouse.

[fol. 308] TRIAL EXAMINER: Now, the pricing that you did of hardware and other things, do I understand that you priced them while they were in boxes, for the most part?

THE WITNESS: Well, for the—I would say for the most part we priced boxes.

TRIAL EXAMINER: I see.

**THE WITNESS:** But on occasion, orders demanded that they take boxes and price individual items.

**TRIAL EXAMINER:** An those items would be something like solid, hardware?

**THE WITNESS:** Hardware; mostly the Hardware Department, we did this.

**TRIAL EXAMINER:** Now, you say you delivered clothing goods to this walled-off partition. How did you deliver that, in boxes, as well?

**THE WITNESS:** What do you mean, to Miss Russe?

**TRIAL EXAMINER:** To Miss Russe.

**THE WITNESS:** Well, we took it off the truck.

**TRIAL EXAMINER:** What was the condition of the merchandise when you took it off the trucks?

**THE WITNESS:** It was in big boxes. We didn't mess with it.

**TRIAL EXAMINER:** Why didn't you mess with it?

**THE WITNESS:** Simply because she was the pricer [fol. 309] and we had nothing to do with pricing the clothing. As a matter of fact, I can't ever remember pricing clothing.

**TRIAL EXAMINER:** Now, if you know, when she priced clothing, did she price it, as you did, generally by pricing the box?

**THE WITNESS:** No; she priced the clothing individually. She took the dresses or whatever it was and put a tag on it and placed it on the floor.

**TRIAL EXAMINER:** On the dress itself?

**THE WITNESS:** Yes, sir.

**TRIAL EXAMINER:** In this Waldorf wall-to-wall room?

**THE WITNESS:** In the partition, only there was a doorway there, to get into the warehouse.

**TRIAL EXAMINER:** Excuse me, Mr. Mittendorf, but I wanted to get the whole picture in the same place in the record.

All right.

**BY MR. MITTENDORF:**

**Q.** Now, did the sales people at Charleston have any regular duties in the warehouse? **A.** None that I can recall, not regular duties.

Q Did they on occasion come to the warehouse? A Yes, they would, to sell a certain, some kind of merchandise that was too large to put on the floor, like a TV antenna; they'd come back to look at it.

Q Did they do any pricing in the warehouse area? [fol. 310] A Oh, I would think possibly in an isolated case they may have, but it wasn't a habit.

Q Are the customers permitted in the warehouse area? A No, they are not, unless they are accompanied by sales personnel.

Q And this is for the purpose of selecting goods? A Selecting merchandise.

Q Or picking up merchandise that has already been purchased? A Yes.

Q Now, with respect to Charleston, how many warehouses were there at Charleston? A At the time we were there they had two warehouses; they had one at Lewis Street and the warehouse at the rear of the store.

Q The one at Lewis Street was how far away? A I don't know; a couple of blocks, I guess.

Q Which one was the bigger of the two? A In area, I suppose the Lewis Street warehouse was.

Q How much of your time did you spend at Lewis Street. A I spent very little time.

Q What about the other employees? A The other employees, they would go back and forth to Lewis Street, maybe two or three times a day, sometimes more.

Q Was there anyone employed at Lewis Street, who [fol. 311] regularly stayed there? A Not from the Charleston store.

Q Was there anyone who stayed at the Lewis Street store? A Not from the Charleston store.

Q Would you lock it as you left the place? A Yes, we did.

Q Now, Mr. Hugert was a driver. What percentage of his time did he spend in the warehouse, Mr. Thornton? A Well, some days he spent most of his time in the warehouse; other days he spent most of his time on the road. It varied.

MR. HOLROYD: I'm going to object to the materiality of this, Your Honor. We have narrowed the issues

down to the pricers, compared to the others. There is no question that this Hugert is in the unit, if it is determined appropriate.

MR. MITTENDORF: Okay.

TRIAL EXAMINER: All right. Are you withdrawing the question?

MR. MITTENDORF: I will withdraw the question.

BY MR. MITTENDORF:

Q With respect to Miss Russe, did Miss Russe spend any time working on the floor at Charleston? A I can recall times when she went out on the floor, yes.

Q How frequently would this happen? A I couldn't say.

[fol. 312] TRIAL EXAMINER: What floor?

MR. MITTENDORF: On the selling floor.

THE WITNESS: At times Miss McGraw or Mrs. Russe would work on the floor. I can't recall dates but I can recall times she did work out there.

BY MR. MITTENDORF:

Q Would she spend some time out there each day? A I can't say each day; some days she didn't dress appropriately to be on the floor, but at times she did go out on the floor.

Q Do the sales personnel at Charleston wear any particular type of dress? A Yes, they do. The women wear smocks and men wear white shirts.

Q What about the warehouse employees? A We just wear clothes like I have got on right now.

Q Did any of the warehouse employees ever go out on the floor and sell? A Well, I can't recall anyone that ever went out on the floor and sold except myself. I was transferred out there a couple of Christmases by the direct orders from the manager and I put up merchandise such as Christmas decorations and then I was told to go back to the warehouse after the holidays were over. I can't recall anyone else that did that, though.

[fol. 313] Q You said you were transferred but did you actually sell while you were on the floor? A Yes, I actually sold, but I was told to go out there with the understanding that I would go back to the warehouse.



Q Do you recall approximately when you first started, Mr. Thornton? A I started sometime in August of 1962. What do you mean—when I started to work?

Q Yes, at Heck's. A Yes, sometime in August of 1962.

Q Then when you went out on the floor, did you go out for Christmas of '62? A No; it was Christmas of '63.

Q Of '63? A That was the first time I went on the floor for approximately a month's time and then in 1964 I went out on the floor during Christmas of that year.

MR. MITTENDORF: That's all I have of Mr. Thornton.

You may examine, Mr. Holroyd.

## CROSS EXAMINATION

BY MR. HOLROYD:

Q Doyle, these items of hardware that you priced, now, would this be nuts, screws and bolts, and things of that nature? A Well, I wouldn't necessarily say it would be nuts, screws and bolts.

[fol. 314] Q Did you price nuts, screws and bolts? A I can't recall ever pricing them.

Q Do you recall ever seeing other warehouse employees pricing nuts, screws and bolts? A No, I can't.

Q Now, having walked through the store myself at times, I noticed that a lot of very small hardware items, such as little drills, not as large as a pencil, would have a price tag on it. Who would put that on there? A I'm afraid I could not know.

Q Well, have you ever put it on items such as that? A I don't believe I can recall doing it. I have priced certain small items.

Q Such as— A But you say a drill, I don't recall.

Q What small items have you priced? A Well, I have priced such items as, probably, files; I don't know; I can't think of any right now, any more.

Q What about larger items of saws and hammers and— A Saws and hammers, yes; I have priced them, on occasion.

Q Individually? A Yes, sir.

Q How about the other warehouse people; did they [fol. 315] price those things, too? A I suppose so. They had the same duties I did.

Q Now, were you working for Heck's when they acquired this Charleston store? A No, sir; I was not.

Q You were not? A I went to work for Heck's after they had the Charleston store for something like a year or more.

Q This was the first store in the chain, then? A This was the first store in the chain; yes.

Q Now, you say Mr. Overton gave employees instructions. Did you ever hear him giving Ernestine Russe instructions? A I can't recall him ever, no.

Q Who was the head of the Clothing Department at that time? A I believe that it was Pearl White; I'm not sure.

Q Did you ever hear Miss White give her instructions? A Yes, I have.

Q What kind of instructions did she give? A Like certain merchandise would be sitting there; she would tell Mrs. Russe she wanted certain merchandise priced and put on the floor.

Q Now, you say on two Christmases—and I assume you mean a month each Christmas—that you worked out on the selling floor; is that correct? A Yes, sir; I did.

[fol. 316] Q And I believe you also said that you knew of no other people who worked back in the warehouse department who also worked out on the selling floor; is that correct? A I can't recall anyone except myself who worked out there for a prolonged period.

Q Did anyone work out there for short periods? A I can't recall that they did.

Q Have you known of any of the warehouse people who were there while you were there that moved out to become full-time sales personnel? A I think, possibly, there might have been some. I can't recall names right at the present time.

Q You think there were some but you can't recall their names? A No, I can't.

Q Let's take the reverse. Do you know of any sales people who left the sales floor and came back as full-time warehouse people? A I can't recall any that I know. Perhaps they did.

Q Now, do all the female employees of the Heck's store in Charleston, at the time you worked there, wear these little smocks? A All the female employees that work on the floor do. Office personnel wouldn't.

[fol. 317] Q How about Mrs. Russe? A Mrs. Russe wore a smock.

Q All the time? A Practically all the time while they was in the warehouse she wore one.

Q Now, you testified earlier that sometimes her dress was not appropriate for selling. Would you tell us what you mean by that?

\* \* \* \*

[fol. 318] TRIAL EXAMINER: Just a minute, Mr. Thornton. I have a couple of more questions. I want to hear a little more about this warehouse.

Do you stock televisions and radios back in that warehouse?

THE WITNESS: Yes, we stored radios. I can't recall perhaps at times we have, have stored TV's back there, but at the time I was working—

TRIAL EXAMINER: Furniture, items of that nature?

THE WITNESS: Yes, sir; I can recall pool tables they stored back there.

TRIAL EXAMINER: Were you ever asked by any department head to price that sort of an item?

THE WITNESS: Price the box?

TRIAL EXAMINER: The box or the item itself, and was it put out?

THE WITNESS: We usually priced it, anyhow.

TRIAL EXAMINER: You did?

THE WITNESS: The master carton; the merchandise was in the carton. We priced them.

TRIAL EXAMINER: Well, now supposing there were six radios, let's say—I don't know if they pack radios that way, but I am thinking of table radios—and they were destined to go out on the selling floor immediately.

Were you ever instructed by a department head to price individual items of that sort and put them out on the floor?

THE WITNESS: Well, I can't recall being instructed to price an individual item. Whatever carton they came in, we put the price of the merchandise on it and they could take it out there.

TRIAL EXAMINER: Who is "they"?

THE WITNESS: Department head; Jewelry, for instance.

TRIAL EXAMINER: I'm talking about heavy items. Who would take it?

THE WITNESS: Most of the heavy items, except for a display, were kept there.

TRIAL EXAMINER: Kept where?

THE WITNESS: Back in the warehouse, so that when they were sold, the customer could have come out and picked them up.

TRIAL EXAMINER: But there must have been some items—

THE WITNESS: They have a display, of course.

TRIAL EXAMINER: How did they get out there?

THE WITNESS: We took them out.

[fol. 320] TRIAL EXAMINER: On whose instructions?

THE WITNESS: On the warehouse supervisor's, Mr. Overton.

TRIAL EXAMINER: How did he know that they were to go out there?

THE WITNESS: Probably the department head in Jewelry, or whatever department head this was, told him.

TRIAL EXAMINER: But you don't know; you are not sure?

THE WITNESS: I'm pretty sure; I'm positive.

TRIAL EXAMINER: Just one more question about this warehouse.

I'm considering the sanitary conditions of the overall place. Do you still work there?

THE WITNESS: . No, sir; I haven't worked there for over two years.



**TRIAL EXAMINER:** Was it as clean in the warehouse as it was in the store?

**THE WITNESS:** No, sir; it wasn't.

**TRIAL EXAMINER:** Why not?

**THE WITNESS:** The store had tile on the floor and the warehouse was just bare concrete and, of course, dust accumulated on this and it wasn't swept out as often as the store was. The store was swept every night.

**TRIAL EXAMINER:** I have no further questions.  
[fol. 321] Does Counsel have any?

**MR. HOLROYD:** I'd like to ask him a couple that were raised by your examination.

**TRIAL EXAMINER:** All Right.

### RECROSS EXAMINATION

**BY MR. HOLROYD:**

**Q** Doyle, first, most of the items that they sell in the store are relatively small items that a customer can carry out; isn't that correct? **A** I would say so; yes.

**Q** You don't sell any bedroom furniture? **A** Not at the time I was employed there. I can recall, in isolated cases, that they sold some chests or something like that, but not as a habit.

**Q** All right. Now, when a shipment of, say, table radios or food mixers or items such as that, that were already boxed up in the individual boxes, when they would come in, who would mark the individual box? Would you mark it, them in the warehouse? **A** Most usually I marked the prices on the boxes. We stacked them, all except what they needed on the floor.

**Q** And these boxes would be sold to the customers without taking them out of the carton? **A** Yes, if the customer wanted to pick one up there; yes, of course.

[fol. 322] **Q** Now, do all the employees use the same lounge and rest room facilities? **A** Yes, sir, we did.

**Q** All the employees in the store? **A** Yes, we did, at the Charleston store.

## LEWIS VICKERS,

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Please be seated and give your name and address to the Reporter.

THE WITNESS: Lewis Vickers, Griffithsville.

## DIRECT EXAMINATION

BY MR. MITTENDORF:

Q Mr. Vickers, how long did you work at Heck's? A Well, approximately, in all, about two years.

Q And I believe you worked at the Nitro warehouse; is that correct? A Correct.

[fol. 323] Q And what were your duties at Nitro? A I was a shipping clerk.

\* \* \* \*

[fol. 326] BY MR. MITTENDORF:

Q Now, Mr. Vickers, would you describe the duties of the warehousemen at Nitro? A Well, the duties of the warehousemen were that they loaded and unloaded the trucks and stacked the incoming merchandise in their particular area and the ones that went out, they loaded back on the trucks, going to the individual stores.

Q All right. What type of merchandise would the warehousemen handle? A All the merchandise with the [fol. 327] exception of the Cosmetics Department's.

Q Who would handle cosmetics? A Cosmetics Department; they had an area of their own where they loaded and unloaded their own trucks.

Q All right. Now, these people in the Cosmetics Department were classed as pricers; is that correct? A I presume; yes.

Q Well, was Anna Lou Adkins one of these individuals? A Yes, sir.

Q Was Sheila Holstein one of them? A Yes, sir.

Q Was Franklin T. Lannon one of them? A Yes, sir.

Q And was Charles T. Lewis one of them? A Yes, sir.

Q Now, those people handled only cosmetics; is that correct? A Yes, sir.

Q All right. What would they do with the cosmetics? A Well, as the cosmetics came in on the trucks, they would unload, stack them in the order, and after they get the orders from the individual stores they would fill these orders and load them on the truck.

Q In short, these people in the Cosmetics Department [fol. 328] would do the same thing with cosmetics that you would do with other items? A Yes, sir.

Q It's been stipulated that Mr. Foy and Mr. Graley were supervisors of the Nitro warehouse. Did the warehousemen and truck drivers take their orders from Foy and Graley? A Yes.

Q Did the truck drivers take their instructions from Mr. Foy and Mr. Graley? A I presume they did.

Q Have you heard Mr. Foy and Mr. Graley give instructions to the truck drivers? A No, sir; not personally.

Q When pricers items were received from the store for items other than cosmetics what would be the procedure? A That would be written up on inter-store transfer and given to the shipper and—

Q You say he would fill the orders. What action would be performed? A We would take the inter-store transfer and, say, take the stock number on the transfer; I would find the stock at the transfer and put it on a 4-wheel buggy and take it to the loading docks.

Q Now, how did the Cosmetics Department fill the orders? A I presume the same way, as far as I know.

[fol. 329] Q When items were sent to one of the stores, would both cosmetics and other items go on the same truck? A Yes, sir.

Q Who would load the truck, as far as cosmetic items are concerned? A The warehousemen would load. The Cosmetics Department brought the cosmetics to the loading dock and from there the warehousemen, they loaded the complete truck.

Q Did the male individuals who are classed as pricers, Mr. Lanham and Mr. Lewis, help you load the truck? A Not that I recall, as far as loading them.

TRIAL EXAMINER: Mr. Mittendorf, what does this prove?

MR. MITTENDORF: Well, I am attempting to show that the pricers were essentially warehouse personnel; they received goods; they filled orders, just as the warehousemen did, and by this testimony I am attempting to show a distinction between the classification of it at Nitro and the comparable classification at St. Albans and Charleston.

TRIAL EXAMINER: I see.

Now, is there any question in your mind but that the fact is that the cosmetic pricers received goods even as did the warehousemen at Nitro?

MR. MITTENDORF: No; no question.

TRIAL EXAMINER: The cosmetics pricers received goods at Nitro just as did the warehousemen?

[fol. 330] MR. MITTENDORF: Specifically limited to cosmetics?

TRIAL EXAMINER: Yes.

MR. MITTENDORF: Yes.

BY MR. MITTENDORF:

Q Now, did you know employee Charles Lewis? A Yes, sir.

Q What was Mr. Lewis' status as an employee? A He was a pricer, I presume.

Q What were his hours? A He was a part-time employee, the best I remember. I don't know the exact hours, but he came in the afternoon and worked the evening, five o'clock.

Q Did he have any other activity that you know of—not employment? A He was a college student.

Q At what college? A West Virginia State.

Q How many days a week did Mr. Lewis work, if you know? A He worked, the best I can remember, every day in the week, in the afternoons.

Q Is there any distinction, if you know, between the



benefits given a full-time employee and those given a part-time employee? A No, sir; I don't know.

Q You don't know? A No, sir; I don't know.

[fol. 331] Q Did you have any kind of health plan or hospitalization plan? A Yes, sir.

Q Do you know if Mr. Lewis participated in that? A No, sir; I don't.

Q You don't know? A I don't know.

Q Were there any employees in the warehouse, other than Mr. Lewis, who worked on a part-time basis at the time of the Union demand? A I can't remember any.

MR. MITTENDORF: That's all I have of Mr. Vickers.

MR. HOLROYD: Bill, I wonder if we can stipulate that that Charles Lewis is properly within the unit as a regular part-time employee.

MR. MITTENDORF: No, I don't think we can, because we have more on him, one other witness.

### CROSS EXAMINATION

BY MR. HOLROYD:

Q Mr. Lewis, the pricers in the warehouse are separated from the rest of the warehouse, aren't they—their part is separated? A Yes, sir.

Q Female employees there wear white smocks, don't [fol. 332] they? A I believe they do.

Q And the male employees wear whatever they want to wear? A Right.

Q Now, Charles Lewis, you say, worked in the afternoon. He worked regularly, practically every afternoon, didn't he? A Yes, sir; the best I can remember.

Q You don't recall how long he worked after you left there, do you, or did he quit the same time you did? A No, he worked after I left.

Q So, as far as you know, he worked eight hours a day? A Yes.

Q He may well have worked eight hours a day; isn't that right? A He could have.

Q Do you know Mike Murdo? A Yes, sir.

Q What did he do? A I believe that he was a carpenter; I think.

Q Did he work around the warehouse? A Yes, sir; he did.

Q What would he do in the warehouse? A Actually, all I know, he built displays and things of that nature.

Q Did you ever help him? A No, sir; not personally, that I recall.

[fol. 333] Q Did you ever see any other employees help him? A I can't remember. They may have; I don't know.

Q You never did see them? A Not that I remember.  
MR. HOLROYD: That's all we have.

### REDIRECT EXAMINATION

BY MR. MITTENDORF:

Q With respect to this Murdo that you mentioned, you say he was a carpenter? A Yes, sir; that's all that I know that he was. He may have been something else.

Q Did he spend most of his time at Nitro; do you know? A Yes, sir; I believe he did.

Q Did he have a separate area that he worked in? A Yes, sir; he had his own area.

Q Did he have a helper or assistants of any kind? A Not that I know of.

Q Did he do any stock work along with you? A No, sir.

Q Or any other employees? A No, sir.

MR. MITTENDORF: That's all.

TRIAL EXAMINER: Did this fellow, Charles Lewis, work for you?

[fol. 334] THE WITNESS: Work for me?

TRIAL EXAMINER: Yes.

THE WITNESS: No, sir; he doesn't work for me.

TRIAL EXAMINER: You didn't immediately supervise him?

THE WITNESS: No, sir.

TRIAL EXAMINER: You never assigned him any work or anything of that sort, any jobs?

THE WITNESS: No, sir; not that I remember.

TRIAL EXAMINER: Well, if you know, how was his attendance record?

THE WITNESS: Good, I suppose; as far as I know.

TRIAL EXAMINER: He was a college student, wasn't he?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Did he take time off at Christmas time?

THE WITNESS: I don't know.

TRIAL EXAMINER: If you know. If you don't know, it's all right.

THE WITNESS: I don't know.

TRIAL EXAMINER: How about exam time?

THE WITNESS: He took time off, I believe, but—

TRIAL EXAMINER: But you don't know?

THE WITNESS: I don't know.

TRIAL EXAMINER: But outside of that he showed up regularly?

[fol. 335] THE WITNESS: Yes, as far as I know.

TRIAL EXAMINER: I have nothing further.

MR. HOLROYD: I would like to state for the record that even though Mr. Vickers was held to be a supervisor, I do not wish that holding to be construed in any way for the Respondent to be bound by his remarks here today, since he was called as General Counsel's witness and not as a witness for—

\* \* \* \*

JAMES E. GOINS,

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

### DIRECT EXAMINATION

TRIAL EXAMINER: Please be seated and give your name and address to the Reporter.

THE WITNESS: James E. Goins, 1654 McClung Street, Charleston, West Virginia.

BY MR. MITTENDORF:

Q Mr. Goins, you were employed at the Nitro, West Virginia, warehouse; is that correct? A Yes, sir.

[fol. 336] Q Did you know an employee by the name of Charles E. Lewis? A Yes.

Q What was Mr. Lewis' status as an employee?

MR. HOLROYD: I'm going to object to that question.

TRIAL EXAMINER: What was his what?

MR. MITTENDORF: Status

TRIAL EXAMINER: If he knows.

[fol. 341]

RAY DARNALL,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Please be seated and give your name and address to the Reporter.

THE WITNESS: Ray Darnall, 5102 Frederick Drive, Charleston, West Virginia.

### DIRECT EXAMINATION

BY MR. HOLROYD:

Q Mr. Darnall, are you the same Ray Darnall who testified in this proceeding on June 29, 1965? A Yes, sir.

Q Have your duties changed in any way since that time? A No, sir.

Q Now, directing your attention to the so-called warehouse employees of the St. Albans and Charleston stores, would you tell us how pricers are carried on the company books in these two stores? A They are carried as warehouse employees.

[fol. 342] Q Are pricers in the stores—not in the warehouse but in the stores—are they male or female employees? A Normally they are male—female employees.

Q Now, you say they are carried as warehouse employees? A Correct.

Q Who do they answer directly to? A To the person in charge of the warehouse; warehouse supervisor.



Q Now, in St. Albans that would be—at the time this Union problem came up—that would be who? A Albert Ferrell, Jr.

Q And in the Charleston store that would have been who? A Henry Overton.

Q Now, there's been some testimony here that the Clothing Department head gave instructions to these female employees referred to as "pricers", from time to time. Now, would you explain this situation? A On several occasions the department had in Clothing Department, which in most cases the pricer in the warehouse, female pricer, does do more work for the Clothing Department than any other department in the store and they will ask them to make tickets or change prices on certain items that are going on ad for the following week.

Q Does the head of the Clothing Department have any [fol. 343] authority to change the number of hours or terms and conditions of employment of the pricers? A No, sir.

Q Are they responsible, are the heads of the Clothing Departments responsible to the company for the pricers? A No, sir.

Q Have the pricers ever been told that they are to take instructions from the head of the Clothing Department alone? A No, sir; they are under the jurisdiction of the warehouse manager.

Q When they were hired, who hired these people? A The manager does all the hiring in the store.

Q Do you ever participate in any of the hiring? A In some cases I do.

Q Have you ever participated in the hiring of pricers in the warehouse? A At the time Mrs. Taylor was hired in St. Albans I was the manager of that store at that time.

Q And you hired her; is that correct? A Yes, sir.

Q Who did you tell her she was to take her instructions from? A From the person in charge of the warehouse.

Q Now, I assume as department heads, as supervisors, they would have the authority to give instructions to any [fol. 344] non-supervisory employees; is that correct? A

They do; any employee in the warehouse, if they want to go back and ask any of them to bring merchandise to the floor or help them price it or bring our merchandise for them, they do it.

Q And if the employees do not follow the instructions, who would the department head go to? A They would go to the warehouse manger.

Q The earlier testimony said that the pricers in these two stores, that is, the St. Albans and the Charleston stores, do most of the pricing for the Clothing Department. A That's correct.

Q Do they do pricing for any other department? A On rare occasions they will help, yes. It's depending on if they are caught up in Clothing and have nothing else to do, they might help in Cosmetics, for instance, price their ad, which brings all the cosmetics ads in the store, rather than price it at a general warehouse.

Q Now, when you say "general warehouse" you are referring to Nitro? A Yes, sir; Nitro, yes.

Q And when you say "store" you are referring to the general store; is that correct? A Correct. On a lot of things—we are going into a heavy toy season, they might help price toys or they may make tickets for the toys, and helping—

[fol. 345] Q Now, let's assume you have had individual boxes coming in, coming off the trucks as individual boxes. Now, who prices that individual box? A The people in the warehouse.

Q Now, if it is a small box that has nothing but one item in it, that's still done by the people in the warehouse? A The people in the warehouse; yes.

Q And what happens to that box when it is priced? A On many occasions it goes right directly to your selling floor and is sold to the customer, in the box. We will use an example: say the trailer brought up a table radio. They are individually boxed when they come to the store. They are priced in the warehouse and take small appliances, and we then put one on display in that department and the others are sold, handed to the customer in the original carton they come into—

Q Does anyone else put an additional price on these boxes? A On occasions, yes. This same radio that we bring in, we might bring in fifty in one shipment. We might decide to run this on ad, or it might be brought for an ad, and the department head might put a price on it with the ad price.

Q That's when you have a sale? A Yes.

[fol. 346] Q But as a general rule, when the item comes in, the warehouseman places the price on it? A Right.

Q Now, nobody puts any other price on that afterwards; is that correct? A No. Now, this isn't a hundred per cent. It depends entirely on our warehouse people. If they are real busy, a lot of times the people in our Jewelry and Small Appliance Departments are not busy and they themselves will price some of it.

MR. HOLROYD: May we go off the record, please?

TRIAL EXAMINER: Yes.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

BY MR. HOLROYD:

Q The testimony here has been that in the Charleston store clothing, the place where the clothing is priced is physically separated from the rest of the warehouse.

Now, would you explain this situation? A The building we are using in Charleston store was originally an old garage and the place that we are pricing clothing happened to be the paint room, within this garage, and it just happens to be an area that we can set up a pricing table and pricing machines and it is nothing that we built especially for a clothing pricing room. It just happened to [fol. 347] be there, part of the structure. We don't own the building so we can't tear it out.

By the same token, if they wanted to separate it, as has been indicated in this hearing, we have, right opposite, on the opposite side of the clothing pricing room, another little room where we store jewelry, small appliances and cosmetics, which we also are keeping separate but this is strictly because of the nature of the building, the way it was laid out.

Q Now, does the occasion ever arise where people on the sales floor would come back into the warehouse and assist in pricing items? A Very often, yes.

Q Very often, Now, do the warehouse people ever go out in the selling part of the store and assist in pricing items? A Not too often, but on occasions we have asked people in the warehouse to assist us in pricing.

Now, again, I refer to this season because it is a busy toy season and we will occasionally take the merchandise right to the floor and ask the people in the warehouse to give us a hand on pricing, putting it into stock.

Q Now, there has been some testimony here that the female pricers wear smocks. Now, is this correct? A They wear smocks. It's on their request. They have asked to wear smocks because, for various reasons—maybe it's [fol. 348] cold, as has been stated before, where they are pricing or they want to keep from soiling their street clothes that they are wearing. It isn't compulsory. We do ask, we do request that all female employees on the selling floor wear smocks and identifying badges with their names on it.

MR. MITTENDORF: May I ask if these questions are being directed to the pricers in the stores as distinguished from the main warehouse, Mr. Holroyd?

MR. HOLROYD: I'm going to elucidate on that, in my next question, Mr. Mittendorf—not the next one but the one after that.

MR. MITTENDORF: All right, sir; proceed.

BY MR. HOLROYD:

Q Are these girls required to wear these uniforms, the pricers? A No.

Q All right. Now, in the stores, the selling stores of St. Albans and Charleston, I assume that the femal pricers there wear these smocks. A Correct.

Q Do they at the central warehouse in Nitro? A Yes, they wear smocks. There, again, they don't wear them at all times. Summer months, when it is extremely hot, they don't want to wear their smocks, but they do request them and when they do request them we furnish them for them.



[fol. 349] Q Now, do you ever have occasions when there is interchange, in the stores, that is, selling stores of St. Albans and Charleston, do you ever have occasion where there is interchange between the people in the warehouse and the people on the selling floor? A Some, yes. In most cases it is people in the warehouse are moved from the warehouse to the floor, selling floor.

We have had, in fact, we had one about two months ago, St. Albans store, where the young man wasn't working on the floor so we moved him to the warehouse.

Q Do you ever have the reverse, where you move it from the warehouse to the store? A Yes, sir.

Q Does this happen very frequently? A Yes, sir.

Q Who is Charles Lewis? A Charles Lewis was an employee in the Nitro warehouse. He isn't presently employed. He's going to school full-time now.

Q Now, when he was employed, normally how many hours a week would he work? A He would come pretty close to putting in a full 40-hour work week. Charlie came in every day at twelve o'clock and worked a lot of the evenings until eight o'clock in the evening. He work d [fol. 350] as a full-time employee during the summer months on regular shifts.

Q Did you consider him and carry him on your books as—a regular part-time employee during the winter months? A Oh, yes; he had a regular schedule that he worked every day.

Q All right. Now, the warehouse people do some pricing, I understand. A Some pricing, yes.

Q Now, other than the boxes, the large boxes or the small boxes that come in, items that come in in cardboard boxes, what else do the pricers in the warehouse, the warehouse people, price? A We receive a lot of shipments from jobbers and within this we will have, we might buy six, we might buy twelve, 150, 200, 250 items. When they come into the warehouse they are checked in the warehouse and priced by the people in the warehouse.

Now, within this, there could be paint brushes; there could be hammers, chisels, oil filters, numerous items, any item that we carry in the warehouse, that we buy in small quantities while we are getting a direct shipment in. This

also is true in our Housewares Department. We buy glassware. We buy small plastics and things of this nature that come into our warehouse and not in all cases but a lot of [fol. 351] cases they are priced right by the warehouse crew.

Q Do you have such things as nuts and bolts that come in? A Yes.

Q I notice you have things even as small as a washer that will have a price on it. A Yes; our plumbing, electrical—this is one of our big suppliers that we receive a shipment from every two weeks.

We have a small T, very small; each one of those items have to have a price ticket on it.

You will have a plate just to go over a light switch; sells for ten cents or nine cents. This has to have a price ticket, sticker on it.

There are just too many items to mention. There's little clamps that you use in your electrical work that sell for eight cents. Each one of these items have to have a ticket.

Q Who puts the price on them? A This is done in our warehouse.

Q Who is Mike Murdo? A Mike Murdo is a maintenance man in the Nitro warehouse.

Q What does he do? A He is general maintenance. He will travel stores and put in light ballast for electrical lights or build display racks, shelves in our store, general maintenance work.

[fol. 352] Q Do any of the other employees in the warehouse, either in Nitro or the other warehouse, assist him in this work? A We have, yes, on occasions, where he has a job he can't handle we will give him some help from our warehouse.

Q Now, at your Nitro warehouse, do you have any janitors? A Yes, sir.

Q How many do you have? A At the time of this, at the time of this organizational campaign we had two.

Q And who were they? A Alton McCann and, I believe, Charles Whitman were there at the time.

Q What did they do as janitors? A Their duties were to clean and watch the warehouse as a night watchman.

Q Who did they take their orders from? A Their orders came most generally from myself.

Q From yourself? A Yes, sir.

Q Did they take any orders from either Ferrell or Overton? A Not in the Nitro warehouse, no.

Q Now, Everett Nichols, who is listed here as an em-[fol. 353] ployee in the St. Albans store, would you tell us what he does or what he did at that time?

MR. MITTENDORF: Who, Mr. Holroyd?

MR. HOLROYD: Everett Nichols.

THE WITNESS: He came in early in the morning before the regular warehouse crew. His duties were to clean, mop the bathrooms, both the office bathrooms and the, clean the bathrooms for the general public; see that all supplies were in the bathrooms, such as any toiletry items.

He normally mopped a little around the snack bar, where it would get messy from the day before.

After he finished his duties he went back in the warehouse and worked as a regular warehouse person.

Q About how long, each day, would these janitorial duties consume? A Normally it would take about two hours or two hours and a half.

Q Now, would Mr. Nichols do anything else in the course of his duties in a given week, other than what you have described to us? A We used him as a relief for the night watchman.

Q Was this a regular relief? A Yes, sir; relieved every Saturday night.

Q And as a night watchman, what did he do? A His duties were to guard the store; he carried a gun.

[fol. 354] Q He carried a gun, you say? A Yes, sir.

Q Did he protect the property against everyone, including the employees, if they should come on the job after hours? A Yes, sir.

Q Now, in the Charleston store, who does the janitor work? Or who did at that time? A At that time the night watchman was doing most of the janitorial work because that store was smaller than our St. Albans store.

Q How much smaller would the Charleston store be than the St. Albans? A It's about half as large as the St. Albans store.

Actually, it's 35,000 square feet in the St. Albans store and 17,000 square feet in the Charleston store.

[fol. 356] TRIAL EXAMINER: As against the warehouse duties?

THE WITNESS: Yes.

MR. HOLROYD: And guard duties.

TRIAL EXAMINER: Is there any contention on your part that Nichols does not belong in the unit?

MR. HOLROYD: We are taking the position that Mr. Nichols should be excluded as a part-time guard from the unit; yes, sir.

\* \* \*

[fol. 358] CROSS EXAMINATION

BY MR. MITTENDORF:

Q Now, with respect to this Mr. Murdo, how long has he been with Heck's, Mr. Darnall? A I couldn't answer that, truthfully.

Q Was he with them at the time this Union campaign took place in October of 1964? A I wouldn't swear to it. I believe that he was. I could check the records for you and find out, but I am not absolutely sure.

Q And is he still with you? A No, sir; he isn't.

Q Did you have a predecessor to Mr. Murdo? A No, sir.

Q He was the only electrical—what is his title, maintenance man? A Maintenance man; general maintenance man.

Q You mentioned he repairs light ballast. Does he do other work when necessary? A Certainly. As I explained to the Hearing Officer, he builds racks, and shelves, general—

Q Are these racks and shelves in use in the other stores? A In the other stores.

[fol. 359] Q Does he sometimes go to the other stores? A Yes.

Q Does he install these racks that he builds. A Yes, sir.

Q I see. Does he have any duties in the warehouse? A He works out of the warehouse. He doesn't actually have a specific duty in the warehouse.

Q As far as the shipping and receiving of the merchandise, he does not do that? A No.



Q He does not report to Mr. Graley or Mr. Foy? A No, sir.

Q He reports directly to you? A Yes, sir.

Q Now, with respect to Mr. Nichols, was Mr. Nichols a full-time employee? A Yes, sir.

Q And you said that his duties as clean-up man take about two hours daily? A I would say about two hours; yes, sir.

Q Then the balance of his day is spent in the St. Albans warehouse area doing loading and unloading of merchandise; is that correct? A That is correct.

Q Now, you said that on one night a week—I believe you said on Saturday night, you said he is used as a watchman. A Yes, sir.

[fol. 360] Q Do his duties start after the store is closed? A Yes, sir.

Q Does this apply to just one night a week? A Yes, sir.

Q The store closes on Saturday night at nine o'clock? A At the time of this campaign it did, yes.

Q And his duties then began at nine and how long did they run? A His duties began at 8:30.

Q And how long did they run? A Until about 5:30 in the morning.

Q But that was on a one-night-a-week basis? A Correct.

Q Was there anyone else in the store when Mr. Nichols was there as a guard? A The only people—on a Saturday night?

Q Yes, sir. A No, no.

Q Did Mr. Nichols always operate on this same schedule? A He didn't always, no. I am not sure the date that we set him up on this schedule, as far as night watching. He did it for about, I'd say, a year, something like that.

Q He did it for a year. Was he doing it at the time of [fol. 361] the Union campaign in October, 1964? A I believe he was.

Q You are not certain of that? A No, sir; I am not certain. I could check the records, if you like.

[fol. 362] BY MR. MITTENDORF:

Q Now, you said that the pricers at both St. Albans and Charleston do more work for the Clothing Department than for any other department; is that Correct? A Yes, sir.

Q Have these pricers always operated in this manner? My question is directed to the pricers at St. Albans and Charleston. Have they always engaged essentially in the work of marking and pricing clothes? A Yes, sir.

Q Now, you have told us that the separation of the clothing section of the warehouse in Charleston was a matter of accident because of the structure of the building that you took over. Now, what about St. Albans? A She used, prior to us remodeling down there and using part of the warehouse for a Shoe Department, she used a corner of that for her pricing, a corner of the warehouse.

At the present time—this, again, was a matter of the store being built the way it was—at one time our general office was in our St. Albans store. Now we have torn out a partition and she sets sets back. It is still within the warehouse but she sets back just a little ways.

Q I see. But the clothing is still physically separated from the other items? A Yes; the clothing is not by a matter of choice. It's just because we need a place to set [fol. 363] our pricing machines and so forth. We wouldn't want to locate it out in the center of our warehouse aisles, so for this reason we set it off to one side and designate a corner for her to work from.

Q Are the clothing marking machines located in the warehouse department? A Part of them. We use a crank machine; we also use a little hand-stamp machine that we use.

Q Now, you stated that the pricers on occasion, you said they may help price toys, for example. A Yes, sir.

Q You said that they may help price housewares. A That is correct.

Q And that they may help price— A I will rephrase that. They do help price toys; they do help price housewares.

Q All right. What is the frequency of their pricing of toys? A As I previously stated, during this season we are going to go into a very heavy toy season and if they are

not busy in the Clothing Department we will ask them to price toys.

Q I see. A As I stated before, this is not clothing—clothing is their biggest job, as far as pricing, but if we [fol. 364] need them in the other department, we ask them to go and they are—

Q Conversely, if they are needed in the Clothing Department, they would remain there and you would find other substitutions for them? A Quite possibly; yes.

Q Now, you made one statement on direct examination, if I am correct.

You said that at St. Albans the interchange between the warehouse and selling department is frequent in the direction from the warehouse to the selling department. A I said "quite frequently." You may have misunderstood me, but I said "quite frequently we do take people from our warehouse and put them into the selling area." Some people feel like that is a promotion.

We do find people that we hire as warehouse employees that we feel have the appearance and the ability to work on our selling floor.

Q Well, what is the nature of these transfers? Is it to accommodate a busy season in the selling area? A It could be either.

Q Or a sale, for example? A It could be a busy season; it could be that we lose an employee in one of our departments and we have someone in the warehouse that we feel like can do the job.

[fol. 365] In fact, there, as Mr. Thornton stated a while ago, I offered him a job in our Sportings Goods Department because we felt like he was qualified to work in this department, on the selling floor.

Q Now, both of the transfers that Mr. Thornton referred to referred to the Christmas rush? A That's correct.

Q So that is the normal picture? A No; I think you are trying to turn my words around. We do use people, as I stated, from our warehouse. In busy seasons we will take them out and ask them to work on the floor, but on a lot of occasions we take the people out of the warehouse and give them a job on the floor.

In fact, we have one of our managers in one of our stores who was originally a warehouseman.

Q Now in point of time—now confining your answer to the period in our campaign, the time of October, 1964—who were the individuals at that time who were transferred from the warehouse to the selling floor at either St. Albans or Charleston? A I couldn't tell you any person, because that's been two years ago. I couldn't say we had a specific person transferred out on the floor.

Q Is that—for your recollection, was Wayne Baker transferred? A Wayne Baker helped out on the floor. [fol. 366] He helped out in the Cosmetics Department.

Q What did he do? A He helped price merchandise, put it on the shelf.

Q What about Sam Nelson, who was a man in the warehouse? A Sam Nelson worked primarily in the warehouse. I think someone—I don't know who it was—stated he did work out on the floor a few days.

Q What about Everett Nichols; did he ever work on the floor? A He would go out and help occasionally, yes. He would take merchandise to the floor.

Q I think all of the employees in the warehouse occasionally took merchandise out. A Yes, sir; this is correct.

Q Now, on how many occasions did these people go out on the floor and sell? A Not too often. As I said, it was only in busy seasons that we asked them.

By the same token, we might be busy in the warehouse and some of our people in the departments go and help in the warehouse.

Q Wasn't this for the purpose of moving merchandise from the warehouse to the floor? A That's the whole principle of any operation, is getting merchandise from our warehouse to the floor.

[fol. 367] Q Yes; and, in short, the reason that the selling employees came to the warehouse was because there was merchandise in the warehouse that was in demand on the floor? A Not on all occasions; yes, sir. We have asked some of our people in the departments to help unload trucks when we were real busy.

Q Now, in your own position, Mr. Darnall, how much of your time do you spend in the main office, which at the



time of the proceeding was in Nitro, I believe? A Oh, it will vary. Some weeks I might be in the office all week; the next week I might be out all week, at stores.

Q Now, at the time of these proceedings, there were, in addition to the Nitro warehouse, there were five stores. At that time there was St. Albans, Charleston, Huntington, Parkersburg, and Ashland? A That's correct.

Q Now, how much of your time did you spend at the St. Albans store? A Oh, it would vary, again. As I say, my duties take me to all stores, so there is no percentage chart I could break it down.

Q Would you visit the St. Albans store at least once a month? A I was probably in the St. Albans store probably twice a week.

[fol. 368] Q And what about Charleston? A Probably about the same.

Q And what about Huntington? A Huntington and Ashland were a little off the beaten track so I might go once a week.

Q And what about Parkersburg? A Probably once every two weeks.

Q Now, when you visited those stores, would your contact be with the employees or would it be with the manager of the store? A Basically it would be with the manager of the stores and we would, on several occasions, visit with employees, have general meetings with the employees.

Q Your visits at St. Albans, when you went to St. Albans, would you spend a full day there or a portion of the day? A No; a portion of the day.

Q All right. Would you on occasion visit both the Charleston and St. Albans store on the same days? A Yes, sir.

Q Did you ever visit more than one store per day? A Quite often; yes, sir.

Q Now, you were referring, I believe, to some small items and you used as an example light switches and the small electrical connections that have to be individually priced.

[fol. 369] Now, you said that that is done in the warehouse. In which warehouse is that done? A Well, we do it, in most cases, in all warehouses; now, not at all times in Charleston warehouse, particularly.

We do it religiously, at all times—in the St. Albans warehouse it depends on how really busy they are on the floor, whether it is all done there, but our warehouse is set up.

Now, Huntington stores we would do it most of the time in the warehouse, but our stores are set up so that if need be we can price it all right in our warehouse.

Q Well, when it is done in the warehouse, who does it? Do the warehouse employees do it or the department? A The warehouse employees help. The people on the floor help.

We might, on occasions, pull cashiers off the registers in the afternoon, when we are not busy. They in turn help.

Q Now, you have a central warehouse at Nitro but all of your merchandise does not go through Nitro, does it? A No, sir.

Q What percentage of the merchandise is delivered directly to the stores? A Probably I would say 50 percent of it is delivered to the stores.

Q I see. Then, as far as any individual store is concerned, half of their merchandise would come from Nitro and the other half would come directly from suppliers? A Yes, sir; all clothing is shipped direct. All of our jobbing orders which I referred to, we use about ten jobbers; that is all shipped direct.

In some cases, part of our cosmetics are shipped direct, where we buy large quantities, where we can get the manufacturer to break them down and ship them in this manner.

Q There was some reference to your now having two stores in the Charleston area, one on Washington Avenue, in Charleston, the other in Kanawha City. A Yes, sir.

Q Now, at the time this proceeding arose, isn't it correct that the Kanawha store was not opened at that time?

A That's true; yes.

MR. MITTENDORF: That's all.

## REDIRECT EXAMINATION

BY MR. HOLROYD:

Q Ray, the pricers in the warehouse, are they physically separated from the other employees of the warehouse,

and if so, in what way? A Are you talking about the Nitro warehouse?

Q The Nitro warehouse, yes. A The pricers in the Nitro warehouse are most of them in the Cosmetics Department. It is still within the given area of the general [fol. 371] warehouse. It is located on one side.

Q Just on the side of the store? A Yes, and we do have, around two sides, we have a partial partition, and the reason for this partition is because we put shelving to stock merchandise in.

Q Now, in the earlier hearing you testified as to your duties as personnel director, and I am not sure that this was covered, but I will ask you anyway: as personnel director, do you make such policy decisions as the description of each individual job, who should do what? A Yes.

Q And who they should be answerable to? A Yes; actually my job in personnel is director of the store operation, which includes personnel.

Q All right. And as I understand it, you are the top man in the company who makes the determination as to who should answer to whom among the employees? A That's right.

Q And it has been your determination that the pricers shall answer, that the pricers in the store shall answer to the warehouse foreman; is that correct? A Yes, sir; that is correct.

Q And you have also testified that all clothing is sent direct to the stores? A Yes.

[fol. 372] Q And also all other jobbing is sent to the stores. Do you receive any clothing at all in the central store in Nitro? A Occasionally we bulk merchandise.

Now, in our clothing department, we consider domestics. We might receive a truckload of bed pillows. We might buy a truckload of tennis shoes, which is also included in our shipping, that we might ship to Nitro warehouse.

Q Now, on these items that are received in the Nitro warehouse, who prices them? A They are in turn shipped, broken down and shipped to the stores and they are priced in the stores.

Q Priced in the stores.

Now, you say that at the time that this thing was set up that you had spent twice a week in the stores in issue here? A Normally, yes.

Q Now, when these stores were initially set up, that is, you weren't working for the company when the Washington Avenue store was set up? A I started in July, '61, prior to the opening of the St. Albans store and the Charleston store.

Q Then you are familiar with the duties of the employees there? A Yes, sir.

[fol. 373] Q As well as the duties of the employees in the St. Albans store? A Yes.

\* \* \* \*



TXD-647-65  
Charleston, W. Va.

UNITED STATES OF AMERICA  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
DIVISION OF TRIAL EXAMINERS  
WASHINGTON, D. C.

Cases Nos. 9-CA-3356,  
3477

HECK'S, INC.  
and

CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL UNION  
No. 175, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA

*William C. Mittendorf*, Esq., of Cincinnati, Ohio, for the  
General Counsel.

*Gardner, Gandal & Holroyd*, by *Fredrick F. Holroyd*, Esq.,  
of Charleston, W. Va., and *George V. Gardner*, Esq.,  
of Washington, D. C., for the Respondent.

*Pottenbarger & Bowles*, by *Martin C. Bowles*, Esq., of  
Charleston, W. Va., for the Charging Union.

Before: *Thomas F. Maher*, Trial Examiner.

TRIAL EXAMINER'S DECISION

Statement of the Case

Upon a charge and an amendment thereto filed on October 23 and December 4, 1964, and a second charge filed on February 15, 1965, by Chauffeurs, Teamsters and Helpers Local Union No. 175, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, the Regional Director for the Ninth Region of the National Labor Relations Board, herein called the Board, issued a consolidated complaint and an amendment thereto on behalf of the General Counsel of the Board against Heck's, Inc.,

Respondent herein, alleging violations of Section 8(a) (1), (3) and (5) of the National Labor Relations Act, as amended (29 U.S.C., Sec. 151, *et seq.*), herein called the Act. In its duly filed answer Respondent, while admitting certain allegations of the complaint, denied the commission of any unfair labor practice.

Pursuant to notice a hearing was held before me on June 28 and 29, 1965, at Charleston, West Virginia, where all parties were represented by counsel and afforded full opportunity to be heard, to present oral argument and to file briefs with me. Although the parties were specifically invited to file briefs with me on the issue of refusal to bargain presented herein, only Respondent complied.

Upon consideration of the entire record, including Respondent's brief, and upon my observation of each witness appearing before me, I make the following:

#### Findings of Fact and Conclusions of Law

##### I. The business of the Respondent

Heck's, Inc., Respondent herein, is a West Virginia corporation engaged in the retail sale of merchandise, including ready-to-wear clothing, sporting goods, hardware, household goods, toys and cosmetics at various locations in the States of Kentucky and West Virginia, including Ashland, Kentucky, and Huntington, Parkersburg, Nitro, St. Albans and Charleston, West Virginia. It is stipulated that during the 12-month period ending in May 1965 Respondent, in the course and conduct of its business operations, had a gross volume of retail sales in excess of \$500,000, and purchased directly from points outside the State of West Virginia and had shipped directly to it in West Virginia goods and products valued in excess of \$50,000. Upon the foregoing I conclude and find that Respondent is an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

##### II. The labor organization involved

It is conceded and I accordingly conclude and find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### III. The issues

1. The discrimination against James Goins.
2. The supervisory status of Ivan Vickers.
3. The failure of Vickers to use due prudence in seeking reinstatement.
4. Respondent's threats to and interrogation of employees.
5. The failure of proof as to the appropriateness of the bargaining unit.

### IV. The unfair labor practices

#### A. *Sequence of events*

1. The Union demand for recognition and Respondent's refusal

In the Charleston, West Virginia area, and specifically in Charleston itself, and nearby Nitro and St. Albans, Respondent operated discount department stores, each with its own warehouse, separately supervised and manned with its own distinct work force. Early in October 1964 some of these warehouse employees developed an interest in the Union, sought out the Union's business agent, Robert Jackson, and obtained from him instructions on organizing the employees together with a supply of blank authorization cards. Prominent in this initial activity were Employees James E. Goins and Virgil R. Searls, and Ivan L. Vickers, whose supervisory status is in issue. By October 9, 13 cards authorizing the Union to represent them had been signed by employees in the three warehouses and submitted to Jackson. The signers and their designated occupations were:

Charles D. Curry	Receiving and Shipping Clerk
Charles G. Ferrell	Warehouseman
James E. Gions	Laborer
Edward L. Hughart	Warehouseman
Richard Johnson	Truckdriver
Franklin T. Lanham	Laborer
James A. May	Laborer

Opie G. Nelson  
 Samuel D. Nelson  
 Virgil R. Searls  
 Doyle Thornton  
 Ivan L. Vickers  
 Larry Woodall

Warehouseman  
 Warehouseman  
 Warehouseman  
 Warehouseman  
 Shipper  
 Truckdriver-Warehouseman

Thereafter, on October 10, Everett Nichols, Warehouse Clerk, signed an authorization card, and on October 13 Anna L. Adkins, a Cosmetics Pricer, did likewise.

On the afternoon of Friday, October 9 Jackson met with Respondent's president, Fred Haddad, and informed him that a majority of employees having signed up with the Union he was requesting recognition of the Union for the truckdrivers and warehousemen employed at the warehouses in Nitro, Charleston and St. Albans. In support of his claim and request Jackson presented the cards to Haddad who inspected each one in turn. After expressing surprise at the identity of some of those who had signed the cards and some consultation with Personnel Manager Ray Darnell he suggested going through the warehouses and talking with the men involved. This idea was vetoed by Jackson.<sup>1</sup> Haddad then sent for Ivan Vickers whose card was among those in the pack and, showing him the card, asked him if he signed it. Vickers replied that he had. Whereupon Haddad directed Vickers to return to work.

During the course of the conversation generated by Jackson's request for recognition he indicated, as noted above, that it was for the warehouses at Nitro, Charleston,

<sup>1</sup> The foregoing is the credited testimony of Jackson. President Haddad denied having seen the cards, testifying that he only looked at the top one, Vickers', and then after "flipping through them" without looking at them he handed them to Personnel Manager Darnell whom he had meanwhile summoned to the meeting. Darnell was not questioned concerning this. I do not accept Haddad's uncorroborated denial that he saw these cards, contradicting as it does Jackson's credited account of the incident. Moreover, Employee S. D. Nelson corroborates Jackson to the extent that Haddad inspected the cards. Thus he credibly testified that Haddad told him that "the union representative had been there and showed him cards signed by the employees of Heck's" and that when Haddad saw Nelson's name "he almost passed out."



and St. Albans. At this point Haddad informed him, according to Jackson, "that he also had stores in Huntington and Parkersburg, West Virginia, and Ashland, Kentucky, each of them having warehouses," but Jackson persisted in his original request for a unit limited to the local warehouses and expressed a willingness to limit the scope of the unit further.<sup>3</sup> Jackson added that "there was some discussion of the clerks and all and I informed him that there was no request for recognition of the clerks, that we did not historically negotiate for clerks." Haddad refused Jackson's several requests for recognition and negotiation of a contract, stating each time, "No comment."

Thereafter on October 12 or 13, in the course of a conversation with Haddad concerning the reinstatement of a recently discharged employee (*infra*, p. 5) Jackson again asked for recognition and bargaining and Haddad again refused.

## 2. Interference, restraint and coercion of employees

Immediately following Haddad's conference with Jackson on October 9, Warehouse Manager Roy Foy called a meeting of the warehouse employees. Haddad addressed the group on this occasion telling them he was surprised at their selection of the Union and asking them as a group what it could do for them, pointed out to them the things he could do regardless of unionization. Thus he explained that he did not have to guarantee a 40-hour week, and that he could require the men to work split shifts. He then singled out an employee in the group, Charles Lewis, and asked him if he had signed a Union application. Lewis replied that he had not. Haddad concluded his remarks by assuring the employees that anyone could withdraw from the Union if he wished and that Respondent would not discharge anyone for joining.<sup>4</sup>

<sup>3</sup> Ivan Vickers credibly testified that at an employee meeting later the same day Haddad stated he did not believe the Union could win an election because the warehouses of all five stores would be involved.

<sup>4</sup> When Personnel Manager Darnell addressed the meeting, he stated that FMC, a local industry, was in the midst of a strike, and

On the next day, October 10, Harry Turner, also known as Junior Turner, Department Head of Housewares at the Charleston store, drove to the Nitro warehouse, sought out Employee S. D. Nelson and invited him to his car in the parking lot where the two talked, at some length. In the course of this conversation Turner asked him to verify the fact that he and another employee, Woodall, had joined the Union. According to Turner himself, whom I credit, he said:

We got to talking about the union. I got to telling him the good points that we had at the store and what the company could do if they wanted to. They didn't have to give us the bonus and they didn't have to have these parties for us and stuff like that. I was explaining the good points to him about it.

Q. Did you make any threats or promises to him as to what would happen if he did or did not join the union?

A. I told him what could happen. The company could cut our raises off, cut it off short, and stuff like that. It was to your own advantages. And our vacations.

if it were forced to move out of town Respondents business would suffer. Counsel for General Counsel contends that this statement on the part of Darnell supports an allegation in the complaint (Par. 5(b)(1)) that the statement, coupled with another to the effect that unionization of Respondent's operations would reduce its discount potential and business, constituted an unlawful threat. There is nothing in the record to indicate that Darnell made any reference to the reduction of Respondent's discount potential.

Actually it was Warehouse Manager Foy, according to Goins, who made the statement in question, specifically that Heck's could not operate with a union and continue as a discount house. At the hearing counsel for the General Counsel was apprised of the fact that the complaint contained no allegation of statements attributable to Foy, an admitted supervisor, and he replied that "this does not go directly to any allegation of the complaint." Under such circumstances, I believe that Respondent was relieved of an obligation to refute the statement or to otherwise litigate the issue. Accordingly, I will not consider the Foy statement in any conclusion I make herein.

Q. Did you tell Mr. Nelson that if the union was voted in that the company would discontinue granting bonuses or reduce the work hours of the employees?

A. No. I said they could.

Q. Did you tell Mr. Nelson that you knew that he and another man, Mr. Woodall, had signed union cards for the union?

A. Yes, sir.

(Tr. 207-209)

A week later, on October 17, Employee S. D. Nelson had another significant conversation, this time with President Haddad who summoned him to his office. After telling Nelson he had seen his union card among those presented by Jackson (*supra*) Haddad offered him a salaried job of \$325 per month if Nelson would help "break up the union in the St. Albans store." When Nelson refused Haddad then asked if he believed he was due for a raise. Nelson expressed doubt because of his union activity whereupon Haddad sent for Personnel Manager Darnell and the two of them checked out a list and stated their conclusion that Nelson was not due for his raise. Then Darnell said, "I wished that you could be on our side."<sup>4</sup>

A week later, on October 23, Haddad made the same proposition to Ivan Vickers who, unlike Nelson, accepted it. Haddad sent for Vickers and in the presence of Personnel Manager Darnell and Merchandise Manager Ellis complimented him upon his work and said he wanted to make a "deal" with him. The "deal" was to put Vickers on a \$850 per month salary to help break up the Union by exerting his influence over his fellow workers.<sup>5</sup>

The foregoing statements and incidents portray a pattern of interference, restraint and coercion of employees.

---

<sup>4</sup> The credited testimony of Employee Nelson. Neither Haddad nor Darnell denied the conduct or statements attributed to them.

<sup>5</sup> The credited testimony of Vickers. Ellis was not questioned about the incident. Haddad and Darnell both corroborate the details of Vickers' transfer to salary status, and Haddad denies any reference was made to the Union. I do not accept Haddad's denial. Darnell testified simply that nothing was said about the Union "to his recollection." I do not accept this as a denial on his part.

Thus Respondent, through its officials and supervisors, in reprisal for the employees joining the Union, threatened to cut this workweek, and, tantamount to a threat in each case, stated that it *could* withdraw bonus payments, eliminate company parties and cut off raises. Similarly, and during the same period it publicly interrogated Employee Lewis concerning his union membership, and sought to bribe Employee S. D. Nelson to work against the Union.\* Citation of authority is unnecessary to establish that such conduct violates Section 8(a) (1) of the Act and I so conclude and find.

### 3. The discharge of James Goins

On the following morning, Saturday, October 10, Employee James Goins was assigned the duty of washing down the warehouse driveway with a fire hose and in the course of it became water soaked to an extent that is in serious dispute. Goins testified he was "sopping wet" from the shoulders down, as the consequence of wielding a leaky nozzle. Ivan Vickers testified merely that he was wet, whereas Goins' supervisor, Graley, testified that Goins' clothing was wet for a distance of 18 inches above the floor.<sup>7</sup> A synthesis of the testimony does establish, then, that Goins was wet and that his request to go home had factual justification. Whereupon, having requested and obtained Supervisor Foy's permission to leave, he did so. Upon his return on Monday, October 12, Goins found his timecard missing from the rack. He questioned Foy who first told him that he had left on the previous Saturday without permission and then stated that his work had been unsatisfactory during his 90-day probation period and that they were going to have to let him go.

The foregoing findings are based on the credited testimony of Employee Goins. I do not accept Supervisor Graley's testimony as credible, having observed him on the

\* In view of my finding that Employee Vickers is a supervisor (*infra*) I make no finding as to whether the successful bribing of him for the same purpose is violative of the Act.

<sup>7</sup> Dependent upon the length of the leg involved this would place the high water mark somewhere between Goins' calf and knee.



witness stand. Throughout his testimony he was hesitant and evasive, and on a number of occasions completely confused, all to such an extent that he inspired no confidence whatever in his testimony respecting Goins. As an example of Graley's confused testimony I would cite his insistence that he knew nothing at all about the Union campaign. It had been credibly testified to by both Goins and Vickers without contradiction, however, by any of Respondent's witnesses that President Haddad had called an employee meeting on October 9, following Jackson's request for recognition, and that Darnell and Graley were present and had spoken to the men. Under such circumstances Graley's professed ignorance of Union matters cannot be accepted. Accordingly I reject all of Graley's testimony, and particularly his testimony that he smelled alcohol on Goins' breath on several occasions, and that this was why he reported him to Foy on Saturday, October 10. Not discounting the possibility that Goins may well have exuded an odor comparable to alcohol, which could have been anything from bonbons to beer to mouthwash Graley did not impress me as one capable of making a refined judgment in such matters. Judging from the manner in which he conducted himself when confronted with questions concerning this subject on cross-examination, indeed a complete unwillingness to give a straight-forward answer, I conclude and find that his story was a fabrication.

I can give no more credence to the report as it comes from Personnel Manager Darnell, who approved Goins' discharge. Thus Darnell testified that Supervisor Foy, in reporting the details of the entire incident to him, included Graley's report that he had smelled alcohol on Goins' breath. Darnell's testimony becomes, at best, hearsay twice removed,—and specifically, hearsay whose source I reject at the outset. I accordingly reject any suggestion in the record that Goins was ever known to have indulged in alcoholic beverages to excess or that he had the odor of such on his breath.\*

---

\* It is significant to note that Goins testified credibly that he does not drink, and that Foy, the supervisor who discharged him, has himself been discharged and cannot be located to testify.

Upon the foregoing facts and conclusions certain other conclusions emerged. Thus it appears that Goins, who had permission to leave was discharged (1) for leaving, (2) for unsatisfactory performance that was unsubstantiated on the record, and (3) inferentially for conduct, if such we may classify bad breath, that was never proven. Occurring as it did on the day following the Union's request to bargain *after* which Respondent's officials engaged in conduct which I have found to constitute unlawful interference, restraint and coercion I have no hesitation in concluding that Foy, the missing supervisor, with Darnell's knowledge, dismissed Goins for the reason that he was known, by Haddad's inspection of union cards, to be a member of the Union and, by the proximity in which he worked with such supervisors as Graley and Foy, to be the one who was soliciting Union memberships.<sup>9</sup> In so concluding I further find and conclude that the reasons suggested by Respondent, unsubstantiated and conflicting as they are, are but pretexts to mask Respondent's true purpose, its attempt to thwart the Union's campaign. Such conduct has consistently been held to constitute discrimination in violation of 8(a) (3) and (1) and I so find and conclude here.

#### 4. The failure to reinstate Ivan Vickers

Ivan Vickers, who has figured prominently in the Union activity described heretofore, is claimed by Respondent to be a supervisor. To this end it adduced considerable evidence in support of its contention, through testimony of President Haddad, Darnell, and Ellis. Moreover, Vickers himself testified that prior to his transfer to the Nitro warehouse he had been manager of Respondent's Lewis Street warehouse and while claiming he did not consider himself to be a supervisor at Nitro because he "wasn't in charge of the warehouse," he was told he was in charge of shipping and he did, in fact, assign warehouse employees to loading and unloading trucks and directed them to filling orders. He also attended supervisory meetings. Accordingly, based upon Vickers' own description of his

<sup>9</sup> *Wiese Plow Welding Co., Inc.*, 123 NLRB 616.

duties as they existed both before and after his Nitro assignment, I conclude and find him to be a supervisor within the meaning of the Act.

On December 3, 1964, Vickers left Respondent's employ to enlist in the United States Air Force. Thereafter, on December 31 he was granted a temporary medical discharge from the service and immediately sought to return to Respondent's employ. He called Merchandising Manager Ellis who took his telephone number and assured him "he thought it would be fine" and would check with Personnel Manager Darnell. Ellis never called back and Vickers heard nothing further. Ellis' testimony lends confusion to the situation. Thus he stated that he *either* referred Vickers to Darnell or said he would check with Darnell, *or* that Vickers should come in and see them. Under such confused circumstances Ellis' testimony is of little value and I rely completely upon Vickers' account. Vickers was returned to his job in March upon the intervention of officials of the United States Veterans Administration. General Counsel alleges Respondent's refusal to recall Vickers during the intervening period to be discriminatory in violation of Section 8(a) (3) of the Act.

Common prudence would suggest that an employee do something more than make a telephone call to secure the reemployment rights due him upon return from military service. Here Vickers, by his own admission, did nothing more and was content to wait for the two or three months during which the governmental wheels turned sufficiently to obtain his job for him. Under these relaxed circumstances I am not disposed to equate Vickers' disinterest with a manifestation of Respondent's discriminatory motive. If, indeed, Respondent was disposed to discriminate against him, Vickers at least had the obligation to establish a case in his own behalf. Sitting upon any rights he may have thought he had is a far cry from this. I accordingly conclude and find upon the record made by Vickers himself that he was not being deprived of employment as a supervisor<sup>10</sup> during the period in which

---

<sup>10</sup> Assuming, contrary to any conclusion herein, that the equities preponderated in Vickers' favor in this matter, it is well established

he blithely waited for someone to return his telephone call. I therefore recommend that so much of the complaint as alleges discrimination against Ivan Vickers in violation of Section 8(a) (3) be dismissed.

#### 5. The alleged refusal to bargain

It is clear from the testimony of Union Representative Jackson, General Counsel's own witness, that President Haddad questioned the scope of the bargaining unit when Jackson requested bargaining on October 9. Thus Haddad told Jackson he had warehouses other than the three whose employees' cards were presented him. In elaboration Jackson testified:

Mr. Haddad said that he had warehouses in all his stores and as a result questioned the unit. However, I told him that I was amenable to negotiate either on behalf of the Nitro Warehouse or separate contracts for the warehouses in the stores.

(Tr. 35)

At this juncture none of the events which I have detailed above, and have found to constitute violations of the Act, had occurred. Under usual circumstances it would be appropriate to inquire, therefore, whether Haddad's refusal in this context was or was not a good faith doubt, particularly in view of his and associates' subsequent conduct. But these do not appear to be usual circumstances and it would seem that as there is so much confusion surrounding the identity and composition of the unit—as sought initially by Jackson, as understood by Respondent, and as urged by General Counsel—that the element of good faith refusal to bargain in a unit appropriate for bargaining need never be reached.

Jackson concededly requested bargaining in behalf of the drivers and warehousemen at the Nitro, St. Albans, and Charleston warehouses and three days later filed a petition for an election in the same unit. Nevertheless, as

that an employer may lawfully refuse to rehire a former supervisor who applies for a supervisory position. *Pacific American Ship-owners Assn.*, 98 NLRB 582, 596.



quoted above, he expressed a willingness at the time *not to be bound* by the scope of the unit he requested.<sup>11</sup> General Counsel, on the other hand, in a consolidated complaint initially issued on April 22, 1965, alleged as the appropriate unit all truckdrivers and warehousemen at Respondent's Nitro warehouse and St. Albans store, with the usual exclusions, and by a June 3 amendment added to this unit the same classifications employed at Respondent's Charleston "store and warehouse." And finally by a document introduced into the record by counsel for the General Counsel entitled "Warehouse Employees" it is claimed that those employees listed thereon as Truck Drivers or Warehousemen at Nitro, St. Albans, and Charleston warehouses constitute the total eligibility list, plus Employee Goins who had been discharged by that time (*supra*, pp. 5-7) and was therefore not on the list. For reasons which follow the total number of employees eligible for inclusion in the unit cannot be precisely determined.

It should now be noted that a distinction exists on the so-called eligibility list between "Drivers and Warehousemen" and other classifications such as "Pricer" and "Receiving Clerk," both of whom General Counsel explicitly stated he would exclude from the unit. This distinction becomes dim, however, at certain points and to such an extent that the terms "Warehousemen" and "Warehouse Employees" are used interchangeably. Thus when Jackson was asked by me to repeat precisely the unit for which he was seeking recognition he stated to me, "Truckdrivers and warehouse employees." And when counsel for General Counsel introduced what, upon refinement, becomes the eligibility list, he referred to it as "a list of the warehouse employees." While it is true that after considerable

<sup>11</sup> Cf. *Sportswear Industries, Inc.*, 147 NLRB 758, wherein the Board, at p. 760, stated:

Once having defined the unit it claims to represent, and having made a demand on that basis, the Union has thereby established the frame of reference for measuring the validity of its demand. "Such a requirement imposes on the union representative only the obligation to say what he means. Failing to do so [the union] cannot be considered as having made the sort of request to bargain which imposes upon an employer a legal obligation to comply" (footnote omitted).

probing on my part the purpose of this list was clarified as being relevant only had it contained the names of all the drivers and warehousemen at the three designated warehouses, nonetheless it is significant to note that ambiguity certainly attended the proceedings at this point.

Upon further development of the evidence as to the appropriate unit other elements of confusion appear. Thus, although General Counsel stated specifically that Pricers "were not to be included in the unit," his own witness, Franklin T. Lanham, corroborated Personnel Manager Darnell's undenied testimony that the duties of the male Pricers differed little, if any, from those of "Warehousemen," the difference being that in addition to loading and unloading trucks and stocking shelves, as do Warehousemen, the Pricers also mark the merchandise. Female Pricers are not required to do the heavy work, it being performed by the Warehousemen.

Nor does the election petition filed by the Union on October 12, 1964, add clarity. Thus, while giving the several addresses of the Employer in one section of the petition form it describes the unit requested as "all employees of the Employer employed at its places of business as warehousemen and truckdrivers" (emphasis added).

Finally, as the hearing progressed and in the course of determining the unit eligibility of an employee in one of the warehouses (Anna Lou Adkins) counsel for the General Counsel was reminded that the employee whose card was being discussed was a "Pricer," the category previously excluded from the unit by counsel's earlier statement of position. In reply counsel stated to me:

I am aware of that, sir. But I still have this problem of what the final unit determination is going to be.  
(Tr. 162)

And earlier in the record when asked by me to clarify the duties of an allegedly eligible employee to determine his inclusion as a Warehouseman counsel stated:

I am aware of the problem you would have with this. But at the same time I am aware that we can concern with the situation that the appropriate unit has not actually been determined as of this time.

(Tr. 135)

Upon the foregoing conglomeration of scanty data the Board, through me, is being asked to conclude that the Union represented the majority of the Respondent's employees in a unit appropriate for bargaining and that President Haddad's refusal to bargain, as detailed above, was not grounded in good faith either as to his doubt of the majority, or of the appropriateness or scope of the unit requested, or both.

Section 9 of the Act provides the framework for the laboratory conditions which the Board deems so essential for the determination of employee representation. Through appropriate rules of decision and its regulations<sup>12</sup> procedures have historically been availed of to provide a forum to assess the duties of those sought in a bargaining unit, the extent of the unit's scope, and a myriad of complications that must be resolved to achieve a reasonable determination of the unit in which a fair election is to be held; all of this through the orderly participation and contribution of both employer and union representatives. Similarly in the conduct of the election itself, where ineligible employees are permitted the privacy of their choice, safeguards are provided in the form of challenge available to all parties to insure that eligibility is maintained and that irregularity is eliminated.

With all due respect to able counsel participating in this proceeding and with full recognition of my own procedural limitations I fail to see how the materials presented in evidence here provides an adequate substitute for the orderly procedure and determination customarily available.

The essence of this case is twofold: that Jackson claimed a majority in an appropriate unit, and that Haddad's refusal was or was not in good faith. As to the former, upon full consideration of evidence presented and the conflicts this evidence contains, I am persuaded that General Counsel has failed to meet the burden of establishing what precisely was the appropriate unit in which the Union had its majority. Failing in this respect and thus creating for me an unresolved doubt concerning the unit, I am not

<sup>12</sup> See Rules and Regulations, Series 8, as amended, Sec. 102.61 et seq.

disposed to conclude that Respondent's refusal or its doubt was any less reasonable, particularly when this refusal rested, at least in part, upon the fact that Respondent had in its employ warehousemen not included in the unit requested.

Upon all of the foregoing considerations, therefore, I would recommend that so much of the complaint as alleges Respondent's refusal to bargain be dismissed.

#### V. The effect of the unfair labor practices upon commerce

The activities of the Respondent set forth in section IV, above, occurring in connection with its business operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### VI. The remedy

Having found that Respondent has engaged in unfair labor practices I shall recommend that it cease and desist therefrom and, because of the gravity of its conduct I shall also recommend that it cease and desist from infringing in any other manner upon the rights of employees guaranteed by Section 7 of the Act.<sup>13</sup>

Affirmatively I shall recommend that James Goins, whom it discriminatorily discharged, be reinstated to his former or substantially equivalent position, if this has not already been done, without prejudice to seniority or any other rights and privileges, and that he be made whole for any loss of earnings suffered by him because of Respondent's discrimination against him, with backpay computed by access to the Company's books, records and accounts, and in the customary manner,<sup>14</sup> with interest added thereto at the rate of 6 percent per annum.<sup>15</sup>

<sup>13</sup> *N.L.R.B. v. Express Publishing Co.*, 312 U.S. 426, 433.

<sup>14</sup> *F. W. Woolworth Co.*, 90 NLRB 289.

<sup>15</sup> *Isla Plumbing & Heating Co.*, 133 NLRB 716.



## RECOMMENDED ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I recommend<sup>16</sup> that Heck's, Inc., its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Unlawfully interrogating employees concerning their union membership, activities or desires.

(b) Threatening their employees with reprisals if they select the Union as their representative.

(c) Offering or granting their employees wage increases and/or promotions in exchange for their active opposition to the Union.

(d) Discharging or otherwise discriminating against employees in respect to hire and tenure of employment for the purpose of discouraging union membership or engaging in concerted activities.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Offer immediate and full reinstatement to James Goins to his former or substantially equivalent position and make him whole in the manner set forth in the section of the Trial Examiner's Decision entitled "The Remedy."

(b) Post at its Nitro, St. Albans and Charleston, West Virginia stores and warehouses copies of the notice attached hereto as "Appendix." Copies of said notice to be furnished by the Regional Director for the Ninth Region shall after being duly signed by the Respondent, be posted immediately upon receipt thereof, in conspicuous places, including places where notices to employees are

<sup>16</sup> In the event that this Recommended Order be adopted by the Board, the word "RECOMMENDED" shall be deleted from its caption and wherever else it thereafter appears; and for the words "I RECOMMEND" there shall be substituted "THE NATIONAL LABOR RELATIONS BOARD HEREBY ORDERS."

customarily posted, and be maintained by it for a period of 60 consecutive days thereafter. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify said Regional Director in writing within 20 days from the receipt of this Decision what steps the Respondent has taken to comply therewith.<sup>17</sup>

(d) Notify James Goins, if presently serving in the Armed Forces of the United States, of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

It is FURTHER RECOMMENDED that so much of the complaint in this proceeding as alleges unlawful discrimination against Ivan Vickers and Respondent's unlawful refusal to bargain with the Union be dismissed.

Dated at Washington, D. C.

/s/ Thomas F. Maher  
Trial Examiner

<sup>17</sup> In the event this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

**APPENDIX**  
**NOTICE TO ALL EMPLOYEES**  
**PURSUANT TO**

**THE RECOMMENDED ORDER OF A TRIAL EXAMINER OF THE  
NATIONAL LABOR RELATIONS BOARD  
and in order to effectuate the policies of the  
NATIONAL LABOR RELATIONS ACT**

**we hereby notify our employees that:**

**WE WILL NOT** unlawfully interrogate our employees concerning their union membership, activities, or desires.

**WE WILL NOT** threaten our employees with reprisal for engaging in union activities or for supporting **CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL UNION NO. 175, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA**, or any other labor organization.

**WE WILL NOT** offer or grant our employees wage increases and/or promotions in exchange for this opposition to the aforesaid union.

**WE WILL NOT** discharge, or otherwise discriminate against our employees in respect to hire or tenure because they are leaders in the aforesaid union or have participated in concerted activities protected by Section 7 of the National Labor Relations Act.

**WE** offer immediate and full reinstatement to his former or substantially equivalent position to James Goins, and **WE WILL** make him whole for any loss of pay he may have suffered, in the manner set forth in the section of the Trial Examiner's Decision entitled "The Remedy."

**WE WILL** notify James Goins, if presently serving in the Armed Forces of the United States, of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

**WE WILL NOT** in any other manner interfere with, restrain or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

All of our employees are free to become or refrain from becoming members of the above-named union, or any other labor organization.

**HECK'S, INC.**  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Room 2023, Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202 (Tel. No. 684-3627).



TXD-149-67

Charleston, W. Va.

**TRIAL EXAMINER'S SUPPLEMENTAL DECISION****Statement of the Case**

On November 30, 1965, a Decision was issued by me in this proceeding finding and concluding that Respondent herein, Heck's, Inc., had not unlawfully refused to bargain collectively with Chauffeurs, Teamsters and Helpers, Local Union No. 175, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein referred to as the Union/ Company, and I accordingly dismissed the Section 8(a) (5) allegation, for the reason that the General Counsel had failed to meet the burden of establishing what precisely was the appropriate unit in which the Union had its majority. In addition, I made certain findings of violations of Section 8(a) (1) and (3) of the Act and recommended that specified remedial action be taken with respect thereto. The case was transferred to the National Labor Relations Board, herein called the Board, on the same day. Thereafter counsel for the General Counsel and Respondent filed exceptions to my Decision and counsel for the General Counsel filed a brief in support of his exceptions.

In due course the Board, upon review of my Decision, the exceptions, supporting briefs and the record, on March 23, 1966 issued its Order Reopening Record and Remanding Proceeding to Regional Director for Further Hearing. The Board found "on the basis of the entire record that the General Counsel was plainly contending that the appropriate unit consisted of all truckdrivers and warehouse employees at the Nitro, St. Albans and Charleston warehouses" of the Respondent. It ordered that the hearing be reopened for the purpose of adducing additional evidence concerning the nature and appropriateness of the bargaining unit, the majority status of the Union, and the alleged refusal of the Respondent to bargain with it, and directed that I prepare and serve upon the parties a Supplemental Decision containing findings of fact, conclu-

sions of law and recommendations to the Board based upon the evidence contained in the entire record.

Pursuant to notice issued on September 28, 1966, by the Regional Director a further hearing was held before me in Charleston, West Virginia. All parties appeared and were afforded full opportunity to be heard, to adduce relevant evidence, to examine and cross-examine witnesses, to present oral argument and to file briefs. Briefs were filed with me on December 15, 1966, by counsel for Respondent and the General Counsel.

Upon the entire record, including the evidence adduced at both the original and subsequent hearings, and all briefs submitted by the parties, I make the following:

### Findings of Fact and Conclusions of Law

#### A. *The Scope of the Remand*

In its Order of Remand the Board specifically found "on the basis of the entire record that the General Counsel was plainly contending that the appropriate unit consisted of all truckdrivers and warehouse employees of the Nitro, St. Albans and Charleston warehouses," these being the three stores and warehouse locations established in the Charleston area, and discussed and identified in further detail in my original Decision.<sup>1</sup>

Because the Board deemed the record before it inadequate "to determine the unit and majority questions" I have been directed to adduce evidence as to (1) whether the unit sought by the Union was in fact "appropriate" for the purposes of collective bargaining, (2) whether the Union represented a majority of employees in said unit, (3) whether the Respondent's refusal in said unit was lawful.

#### B. *The Unit Claimed by General Counsel*

As determined by the Board in its Order of Remand the General Counsel contends that the unit appropriate for collective bargaining herein consisted of

<sup>1</sup> Reference to my original Decision at a designated page will be indicated herein as TXD, p. —.

All truckdrivers and warehouse employees at the Nitro, St. Albans and Charleston warehouses, excluding office clericals, guards, professional employees and supervisors as defined in the Act, and all other employees.<sup>2</sup>

### C. *The Appropriate Unit*

In response to the Board's inquiry in its Order of Remand as to the appropriateness of the bargaining unit sought by the Union there is a basic difficulty. It has not been established by the record that when the Union made its demands it did so in a given unit. Thus, as previously found, Union Representative Jackson credibly testified at one point

Mr. Haddad said that he had the warehouses in all his stores and as a result questions the unit. However, I told him that I was amenable to negotiate either on behalf of the Nitro Warehouse or separate contracts for the warehouses in these stores.

(Tr. 35)

Preceding from this for purposes of determining the appropriateness of the unit which the General Counsel contends for, that unit may be identified as comprising the employees at the several warehouses of the Respondent's retail chain stores located in the Charleston, West Virginia, geographical area.

As to the retail stores themselves it is settled that all of such located in a geographical area may constitute a single bargaining unit.<sup>3</sup> It is equally well settled that a unit of employees in the retail industry engaged in warehouse functions, including the truckdrivers, constitutes an appro-

<sup>2</sup> The excluded categories were not set forth in the General Counsel's original contention but appeared for the first time in his most recent brief to me. At the further hearing counsel for the General Counsel indicated on the record as intent to set forth an alternate unit position. As the Board has specifically ruled on the nature of the unit being contended for I precluded counsel from further discussion of alternatives.

<sup>3</sup> *Sav-On Drugs Inc.*, 138 NLRB 1082.



appropriate bargaining unit.\* *A fortiori*, two or more groups of employees constituting all of the employer's warehouse employees in the geographical area would likewise constitute an appropriate unit.

The record in the instant proceeding discloses that in the respective warehouses there is a complete separation of functions of the warehouse employees and the selling personnel, and no interchange between either group. Thus the respective warehouse areas are completely partitioned off from the selling areas, inter-access being by door; the individuals employed in the warehouse are separately supervised there; they perform the usual warehousing functions such as a truck unloading, unpacking, pricing, storing, and the delivery of items to the selling floor. There is, however, a dispute as to whether certain Pricers should be included in the unit, it being stipulated, nevertheless, that those at the Nitro store be included. The General Counsel would exclude the Clothing Pricers at the St. Albans and Charleston warehouses, Employees Taylor and Russe, while on the other hand the Company would include them. Everyone agrees the Pricers at Nitro should be included. Both Taylor and Russe, each of whom price clothing exclusively, work in warehouse areas, but in each case in a section partitioned off from the rest of the warehouse. In the course of their duties each of them receive pricing instructions from the supervisor of the Clothing Department. Each employee is carried on Respondent's personnel records as a warehouse employee and there is no evidence that they are engaged in selling functions as part of their usual duties.

From the credited testimony of Employees Larry Woodall and Doyle Thornton, called as witnesses by the General Counsel, and of Personnel Manager Ray Darnell, it is clear that except for the segregated work areas provided for Clothing Pricers at each warehouse the nature of their duties does not differ substantially from that of other pricers, and indeed the separation at St. Albans was explained by the existence of such a separate room in the warehouse when first the building was acquired. Certainly the in-

\* *The May Department Stores Company*, 153 NLRB 842; *Love-man, Joseph and Loeb*, 152 NLRB 719.



herent character of clothing merchandise should itself explain why warehousing it separately from the general stock would be prudent practice, avoiding soilage and spoilage. And finally it is evident that the instructions which the Clothing Pricers receive from the Clothing Department supervisors would constitute a reasonable source of pricing information. Nor is there anything in the record to suggest why the Clothing Pricers at two warehouses should be treated differently from those at the third warehouse, Nitro.

Upon review of all of the foregoing considerations it is apparent that the element of community of interest and integration of the Clothing Pricers at St. Albans and Charleston with the other warehouse employees are not lessened by any routine contacts these employees may have with personnel in other areas of the store anymore than would the truckdrivers' like community of interest be destroyed by their regular absence from the warehouse, driving about the city. On the contrary, the Pricers in question, both female employees, have warehouse supervision, do the same general type of work, excepting the heavy lifting, wear clothing appropriate to their duties, and associate occupationally with the warehouse employees, meeting with others only on an "emergency" or sporadic basis. I would therefore conclude and find that *all* Pricers are appropriately a part of the warehouse unit.

Upon all of the foregoing I would conclude and find as a unit appropriate for the purposes of collective bargaining

All truckdrivers and warehouse employees, including all pricers at the Nitro, St. Albans and Charleston warehouses, excluding office clericals, guards, professional employees and supervisors, as defined in the Act, and all other employees.

**D. *Majority Status of the Union in the Above-Described Unit Found to be Appropriate***

As previously found by me (TXD, pp. 2-3), by October 9, 1964, thirteen employees in the three warehouses had signed cards authorizing the Union to represent them and

submitted them to Union Representative Jackson. These cards presented to President Haddad as evidence of the Union's claim and inspected by him were for the following:

Charles D. Curry  
Charles G. Ferrell  
James E. Goins  
Edward L. Hughart  
Richard Johnson  
Franklin T. Lanham

James A. May  
Opie G. Nelson  
Samuel D. Nelson  
Virgil R. Searls  
Doyle Thornton  
Ivan L. Vickers  
Larry Woodall \*

As I have previously found and concluded that Ivan Vickers was a supervisor at all relevant times herein (TXD, p. 7) his card cannot be included among those cards availed of by the Union to support its claim of majority status on October 9. I accordingly conclude and find that upon that date, on the occasion of Union Representative Jackson's request of President Haddad that Respondent bargain with the Union (TXD, p. 3), the Union represented 12 employees, as evidenced by cards in its possession.

As a means of establishing the composition of the bargaining unit claimed by General Counsel to be appropriate a list of warehouse employees at Nitro, St. Albans and Charleston, supplied by Respondent, was admitted into evidence. The list is as follows, excluding four individuals, Graley, Vickers, Elbert Ferrell, and Overton, who have either been found by me or stipulated to be supervisors:

---

\* Everett Nichols, Warehouse Clerk, and Anna L. Adkins, Cosmetics Pricer, signed the cards on October 10 and 13 respectively. Obviously these were not included among the cards submitted to Haddad.

All cards received in evidence were identified by the respective employees or by Jackson in whose presence they were signed. There is no contest as to either their authenticity or to the fact that each was signed for the purpose of selecting the Union as bargaining representative.

**Nitro, West Virginia**

Anna Lou Adkins	Pricer
James A. Cooper	Warehouseman
Charles D. Curry	Warehouseman
Charles F. Ferrell	Warehouseman
Sheila V. Hostein	Pricer
Richard Johnson	Driver
Earl Keeney	Driver
Franklin T. Lanham	Pricer
Charles E. Lewis	Pricer
James A. May	Warehouseman
Opie Nelson	Warehouseman
Dallas T. Queen	Warehouseman
Virgh Searls	Warehouseman
Lloyd J. Slack	Driver
Roger Stackey	Warehouseman

**St. Albans, West Virginia**

Wayne Baker	Warehouseman
Samuel D. Nelson	Warehouseman
Everett Nichols	Warehouseman
Evelyn Taylor	Pricer
Larry Woodfall	Driver

**Charleston, West Virginia**

Charles G. Ferrell	Warehouseman
Edward L. Hughart	Driver
Ernestine Russe	Pricer
Doyle Thornton	Warehouseman

A tabulation of this list indicates that there are a total of 24 eligible employees in the bargaining unit claimed by General Counsel and found by me to be appropriate.

Of the foregoing it is apparent that on October 9, 1964, when Union Representative Jackson presented the cards for Supervisor Vickers and the 12 warehouse employees to President Haddad and requested recognition and bargaining the Union represented only 12 of the 24 eligible rank-and-file employees in the unit which I find herein to be appropriate. It did not at that time represent a majority.

### E. Subsequent Activity Relating to the Bargaining Unit

Two more cards came into the possession of the Union after it had shown the original group of cards to Haddad: the cards of Nichols and Adkins, signed on October 10 and 18, respectively. Meanwhile a number of events had transpired. Harry Turner, Department Head of Housewares at Charleston, engaged in conversations on the following day, October 10, which I have already found to contain unlawful threats to cancel wage increases and discontinue bonuses if the Union got in (TXD, pp. 4-5). A week later President Haddad offered a promotion to one of the employees who had joined the Union on condition that the employee would agree to work against the Union (TXD, p. 5). And again a week later he offered a similar inducement to Supervisor Vickers for the same purpose (TXD, pp. 5, 7). These incidents I have already found to constitute unlawful interference, restraint and coercion. Additionally I found that on October 10 Respondent discriminatorily discharged Employee James Goins (TXD, pp. 5-7).

Meanwhile, on October 12, the Union filed its petition in Case No. 9-RC-6097, later withdrawn, seeking an election among

all employees of the Employer employed at its places of business as warehousemen and truckdrivers; excluding all office clerical employees, all guards, professional employees and supervisors, and any others excluded in the Act, as amended.

The petition indicates the Union's belief that there were 19 employees in the bargaining unit, and it makes no reference to Pricers, all of whom I have found (over General Counsel's objection as to those in St. Albans and Charleston) to be included in the appropriate unit (*supra*, p. 4).

While it is evident that the Union did not have a majority of the 24 employees when it requested recognition on October 9 it did achieve this majority on October 10, with Nichols' card, and it increased it by one more with



Adkins' card on October 12. If, then, on October 10, and thereafter, the Union continued to claim recognition the issue of Respondent's refusal becomes a real one indeed.

During the week after his initial request for recognition, "about the 12th or 13th of October," Jackson, as I have already found (TXD, p. 4), in the course of seeking the reinstatement of the discharged Employee Goins (TXD, p. 5), asked President Haddad a second time to recognize and bargain with the Union, and again received the same reply: "No comment."

I would conclude and find that Jackson's request for recognition first made on October 9, 1964, became a continuing request thereafter for the reason that (1) it was followed by the filing of a representation petition the next day,\* (2) it was followed immediately by an effort on the part of Supervisor Turner to procure defections from the Union, and finally (3) on October 12, a new request was made of Haddad by Jackson and refused; to be followed thereafter by Haddad's efforts to induce union members to defect from the Union.

In summary, therefore, it is apparent that during the pendency of its claimed majority status prior to October 12, the Union possessed the cards of out of the total complement of 24; and that after October 13, upon receipt of Adkins' card and after Jackson's second request for bargaining, and at a point when a further request would be deemed futile,<sup>†</sup> I would conclude and find that in support of its continuing demand for recognition the Union then had 14 valid designation cards, of a possible total of 24, in its possession. Thus there is conclusive evidence that during the period in question the Union had established and maintained its majority status in a unit which I find to be appropriate for the purposes of collective bargaining.

---

\* See *Ivy Hill Lithograph Co.*, 121 NLRB 831, 835, fn. 13; *Automotive Supply Co., Inc.*, 119 NLRB 1074.

<sup>†</sup> *America Compressed Steel Corporation*, 146 NLRB 1463, enfd. 343 F.2d 307 (C.A., D.C.).

*F. The Legality of Respondent's  
Request to Bargain*

Jackson's demand of Haddad for recognition has, at first glance, the appearance of a flexible one. Thus after testifying at several points that he requested recognition and bargaining for truckdrivers and warehousemen at the *three* local facilities he then testified in response to questioning of counsel for the Union, as follows:

Mr. Haddad said that he had warehouses in all of his stores and as a result questioned the unit. However, I told him that I was amenable to negotiate either on behalf of the Nitro Warehouse or separate contracts for the warehouses in the stores (Tr. 35).

It is true, of course, that an employer cannot be held to have refused the bargain collectively with the representative of an appropriate unit until the representative has first sought or indicated a desire to bargain for the unit.<sup>8</sup> Thus any variance between the unit requested and that found appropriate raises an issue in this respect. It has long been held by the Board, however, that to be fatal any variance must be a substantial one.<sup>9</sup> Such is not the case here. Indeed there is no variance, but rather an alternative, if even that could be spelled out. Jackson made his demand for truckdrivers and warehousemen, the latter being deemed by me to include Pricers. In an effort to accommodate he then suggested the alternative of separate contracts. But he certainly cannot be said to have abandoned his original claim. Therefore, I do not view this offer of accommodation to be the substantial variation intended by the Board and I see no other variance. Accordingly, I would conclude and find that a valid demand in the appropriate unit was made on October 9, and for reasons already stated continued thereafter.

It is apparent from Respondent's intervening and subsequent conduct which I have already found to be violative

<sup>8</sup> *N.L.R.B. v. Columbian Enameling and Stamping Co.*, 306 U.S. 292, 300.

<sup>9</sup> *Barlow-Maney Laboratories*, 65 NLRB 923.

of the Act (TXD, *supra*) that it was engaging in a course of conduct calculated to undermine the Union and reflected a rejection of the principles of collective bargaining. I am persuaded therefore, that its refusal to bargain with the Union as a majority representative of the employees in the unit which I have found to be appropriate was not grounded upon any element of good faith but constituted a refusal to bargain in violation of Section 8(a)(5) of the Act, thereby interfering with, restraining and coercing its employees in violation of Section 8(a)(1).<sup>10</sup>

### G. *The Remedy*

I have already found that the Respondent has engaged in certain unfair labor practices which I recommend be remedied by the issuance of an order that Respondent cease and desist from the conduct found and that it further cease and desist from infringing in any other manner upon the statutory rights of its employees and an affirmative order reinstating Employee James Goins with backpay (TXD, pp. 10-12). I shall reaffirm these recommendations by appropriate reference in my Supplemental Recommendations herein. In addition, I shall recommend that Respondent bargain collectively with the Union in the unit which I have found to be appropriate for bargaining purposes, and I shall further recommend that it be required to post a notice of compliance which consolidates the matters contained in both my original and supplemental recommendations.

### SUPPLEMENTAL RECOMMENDED ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, and the National Labor Relations Board's Order of Remand issued to me in this proceeding, I hereby reaffirm my recommendations contained in my Decision is-

<sup>10</sup> *The Great Atlantic and Pacific Tea Company, Inc.*, 162 NLRB No. 110.

sued on November 30, 1965, and I further recommend<sup>11</sup> that Heck's, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from refusing to bargain with CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL UNION NO. 175, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA as the exclusive representative of employees in the following unit found to be appropriate for the purposes of collective bargaining:

All truckdrivers and warehouse employees, including all pricers, at the Nitro, St. Albans and Charleston warehouses, excluding office clericals, guards, professional employees and supervisors as defined in the Act, and all other employees.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Upon request bargain collectively with the above-named labor organization as the exclusive representative of all Respondent's employees in the unit found to be appropriate and, if an agreement is reached, embody such an understanding in a signed agreement.

(b) Post at its Nitro, St. Albans and Charleston, West Virginia, stores and warehouses copies of the notice attached hereto as "Appendix," it being a consolidation with the notice previously recommended be posted in this proceeding.<sup>12</sup> Copies of said attached notice to be forwarded

<sup>11</sup> In the event that this Supplemental Recommended Order be adopted by the Board, the words "RECOMMENDED" shall be deleted from its caption and wherever else it appears thereafter; and for the words "I RECOMMEND" or "I FURTHER RECOMMEND" there shall be substituted "NATIONAL LABOR RELATIONS BOARD HEREBY ORDERS."

<sup>12</sup> In the event that this Supplemental Recommended Order be adopted by the Board the words "A DECISION AND ORDER" shall be substituted for the words "THE SUPPLEMENTAL RECOMMENDED ORDER OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order be enforced by



by the Regional Director for Region Nine shall, after being duly signed by the Respondent, be posted immediately upon receipt thereof, in conspicuous places, including places where notices to employees are customarily posted, and be maintained by it for a period of 60 consecutive days thereafter. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify said Regional Director in writing within 20 days from the receipt of this Supplemental Decision what steps the Respondent has taken to comply therewith.<sup>13</sup>

Dated at Washington, D. C.

/s/ Thomas F. Maher  
Trial Examiner

---

a United States Court of Appeals, "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

<sup>13</sup> In the event that this Supplemental Recommended Order is adopted by the Board, this provision shall be modified to read "Notify the said Regional Director in writing within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

**APPENDIX**  
**NOTICE TO ALL EMPLOYEES**  
**PURSUANT TO**  
**THE SUPPLEMENTAL RECOMMENDED ORDER**  
**OF A TRIAL EXAMINER OF THE**  
**NATIONAL LABOR RELATIONS BOARD**  
**and in order to effectuate the policies of the**  
**NATIONAL LABOR RELATIONS ACT**  
**(As Amended)**

we hereby notify our employees that:

**WE WILL NOT** unlawfully interrogate our employees concerning their union membership, activities or desires.

**WE WILL NOT** threaten our employees with reprisal for engaging in union activities or for supporting **CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL UNION NO. 175, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA**, or any other labor organization.

**WE WILL NOT** offer or grant our employees wage increases and/or promotions in exchange for this opposition to the aforesaid union.

**WE WILL NOT** discharge, or otherwise discriminate against our employees in respect to hire or tenure because they are leaders in the aforesaid union or have participated in concerted activities protected by Section 7 of the National Labor Relations Act.

**WE** offer immediate and full reinstatement to his former or substantially equivalent position to James Goins, and **WE WILL** make him whole for any loss of pay he may have suffered, in the manner set forth in the section of the Trial Examiner's Decision entitled "The Remedy."

**WE WILL** notify James Goins, if presently serving in the Armed Forces of the United States, of his right to full reinstatement upon application in ac-

cordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

**WE WILL** upon request bargain collectively with **CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL UNION NO. 175, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA**, as the exclusive representative of all the employees in the bargaining unit described below, concerning rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody it in a signed agreement. The bargaining unit is

All truckdrivers and warehouse employees, including all pricers, at the Nitro, St. Albans and Charleston warehouses, excluding office clericals, guards, professional employees and supervisors as defined in the Act, and all other employees.

**WE WILL NOT** in any other manner interfere with, restrain or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

All of our employees are free to become or refrain from becoming members of the above-named union, or any other labor organization.

**HECK'S INC.**  
(Employer)

By \_\_\_\_\_  
(Representative) (Title)

Dated \_\_\_\_\_

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Room 2407 Federal Office Building, 550 Main St., Cincinnati, Ohio 45202 (Tel. No. 684-3686).

Charleston, W. Va.  
\* \* \*

### DECISION AND ORDER

On November 30, 1965, Trial Examiner Thomas F. Maher issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He also found that the Respondent had not engaged in other unfair labor practices alleged in the complaint and recommended dismissal of these allegations. Thereafter, the General Counsel filed limited exceptions to the Trial Examiner's Decision with a supporting brief, and Respondent filed limited exceptions.

On March 23, 1966, the Board entered an order reopening the record and remanding the proceeding to the Regional Director for further hearing before the Trial Examiner to receive evidence from the parties concerning the nature and appropriateness of the bargaining unit, the majority status of the Union, and the alleged refusal of the Respondent to bargain with it.

On March 28, 1967, the Trial Examiner issued his Supplemental Decision, in which, on the basis of the evidence adduced at the reopened hearing, he found that Respondent had engaged in certain unfair labor practices, and recommended that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Supplemental Decision. The Respondent filed exceptions to the Trial Examiner's Supplemental Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated 166 NLRB No. 38 its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings made by the Trial Examiner at the hearings and finds that no prejudicial error was committed. The rulings are hereby affirmed.



The Board has considered the Trial Examiner's Decision, the Supplemental Decision, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, as modified.<sup>1</sup>

### ORDER<sup>2</sup>

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Heck's Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unlawfully interrogating employees concerning their union membership, activities, or desires.

---

<sup>1</sup> Contrary to the Trial Examiner, we find that during the period when Ivan Vickers was employed at Respondent's Nitro store warehouse, he was not a supervisor. Although normally in charge of shipping, Vickers worked under either Foy, the warehouse manager, or Graley, the assistant warehouse manager; his authority to direct other warehouse employees was limited to using warehouse employees who were not otherwise occupied to assist him. In loading and unloading merchandise, Vickers worked alongside the other employees with no authority to hire, fire, or discipline. Moreover, although Respondent's policy was to pay its supervisors on a salary rather than on an hourly basis, up to one month prior to his leaving the job for the Air Force, Vickers was paid an hourly rate with no greater benefits than those received by other warehouse employees. Further, we note that at the hearing in response to a question as to who were the supervisors at the Nitro warehouse, Graley replied that they consisted of himself and Foy; he failed to mention Vickers.

<sup>2</sup> The Trial Examiner inadvertently excluded employee James Goins from the unit. With the inclusion of Goins and Vickers, the bargaining unit consisted of 26 rather than 24 employees on October 9, 1964, when the Union sought recognition. The record is corrected accordingly.

On Page 6, line 37 of the Trial Examiner's Supplemental Decision, the date October 12 is corrected to read October 13.

<sup>3</sup> In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order."

(b) Threatening their employees with reprisals if they select the Union as their representative.

(c) Offering or granting their employees wage increases and/or promotions in exchange for their opposition to the Union.

(d) Discharging or otherwise discriminating against employees in respect to hire and tenure of employment for the purpose of discouraging union membership or concerted activities.

(e) Refusing to bargain with Chauffeurs, Teamsters and Helpers Local Union No. 175, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of employees in the following appropriate unit:

All truckdrivers and warehouse employees, including all pricers, at the Nitro, St. Albans, and Charleston warehouses, excluding office clericals, guards, professional employees, and supervisors as defined in the Act, and all other employees.

(f) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the above-named labor organization as the exclusive representative of all Respondent's employees in the unit found to be appropriate and, if an agreement is reached, embody such an understanding in a signed agreement.

(b) Offer James Goins immediate and full reinstatement to his former or substantially equivalent position, and make him whole for any losses he may have suffered, together with 6 percent interest thereon, in accordance with *F. W. Woolworth Co.*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716.

(c) Notify James Goins, if presently serving in the Armed Forces of the United States, of his right to full reinstatement, upon application, in accordance with the Selective Service Act and the Universal Military Train-

ing and Service Act, as amended, after discharge from the Armed Forces.

(d) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all payroll records, social security records, timecards, personnel records and reports, and all other records relevant and necessary to the determination of backpay due and the reinstatement provided under the terms of the order.

(e) Post at its Nitro, St. Albans, and Charleston, West Virginia, stores and warehouses, copies of the attached notice marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 9, shall, after being duly signed by the Respondent, be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify said Regional Director, in writing, within 10 days from the date of this Decision, what steps have been taken to comply herewith.

It is further ordered that so much of the complaint in this proceeding as alleges unlawful discrimination against Ivan Vickers, be, and it hereby, is dismissed.

Dated, Washington, D. C. June 30, 1967.

/s/ Frank W. McCulloch, Chairman  
/s/ John H. Fanning, Member  
/s/ Howard Jenkins, Jr., Member  
NATIONAL LABOR RELATIONS  
BOARD

[SEAL]

**APPENDIX**  
**NOTICE TO ALL EMPLOYEES**  
**PURSUANT TO**  
**A DECISION AND ORDER**

of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

**WE WILL NOT** unlawfully interrogate our employees concerning their union membership, activities or desires.

**WE WILL NOT** threaten our employees with reprisal for engaging in union activities or for supporting **CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL UNION NO. 175, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA**, or any other labor organization.

**WE WILL NOT** offer or grant our employees wage increases and/or promotions in exchange for opposition to the aforesaid Union.

**WE WILL NOT** discharge, or otherwise discriminate against our employees in respect to hire or tenure because they are leaders in the aforesaid Union or have participated in concerted activities protected by Section 7 of the National Labor Relations Act.

**WE** offer immediate and full reinstatement to his former or substantially equivalent position to James Goins, and **WE WILL** make him whole for any loss of pay he may have suffered.

**WE WILL** notify James Goins, if presently serving in the Armed Forces of the United States, of his right to full reinstatement, upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

**WE WILL**, upon request, bargain collectively with **CHAUFFEURS, TEAMSTERS AND HELPERS**,



**LOCAL UNION NO. 175, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA**, as the exclusive representative of all the employees in the bargaining unit described below, concerning rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody it in a signed agreement. The bargaining unit is

All truckdrivers and warehouse employees, including all pricers, at the Nitro, St. Albans, and Charleston warehouses, excluding office clericals, guards, professional employees, and supervisors as defined in the Act, and all other employees.

**WE WILL NOT** in any other manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

All of our employees are free to become or refrain from becoming members of the above-named Union, or any other labor organization.

**HECK'S INC.**  
(Employer)

By \_\_\_\_\_  
(Representative) (Title)

Dated \_\_\_\_\_

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Room 2407 Feder a Office Building, 550 Main St., Cincinnati, Ohio 45202 (Tel. No. 684-3686).

## ERRATUM

Through inadvertence the words "where ineligible employees" were used on page 10 line 10 of the Trial Examiner's Decision in this matter. For them there should be substituted the following words: "wherein eligible employees."

/s/ Thomas F. Maher  
Trial Examiner

Dated: December 2, 1965.

---

**EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS**

**[fol. 1]                      BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
NINTH REGION**

**Case No. 9-CA-3728**

**In the Matter of:**

**HECK'S, INC.**

**and**

**FOOD STORE EMPLOYEES UNION, LOCAL # 347, AMAL-  
GAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF  
NORTH AMERICA, AFL-CIO**

**Civil Service Room  
Post Office Building  
Ashland, Kentucky  
Wednesday, February 1, 1967**

**The above-entitled matter came on for hearing, pursu-  
ant to notice, at 10:00 o'clock, a.m.**

**BEFORE:**

**SIDNEY SHERMAN, Esq. Trial Examiner**

**[fol. 11]                      SHERWOOD M. SPENCER**

**was called as a witness by and on behalf of the General  
Counsel and, after being first duly sworn, was examined  
and testified as follows:**

**DIRECT EXAMINATION**

**BY MR. GRAVITT:**

**Q State your full name and address. A Sherwood  
M. Spencer, Secretary-Treasurer of the Food Store Em-  
ployees Union. Our post office address is Post Office Box  
2751, Charleston 25330.**

Q Are you associated with the Food Store Employees Union, Local Number 347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO? A I am.

[fol. 12] Q In what capacity? A Secretary-Treasurer.

Q And how long have you served in that capacity? A About 23 years.

[fol. 15] BY MR. GRAVITT:

Q Now, prior to October the 11th, 1965, Mr. Spencer, did you have a conversation with anyone in regard to organizing Heck's? A With Mr. Holroyd, yes.

Q And how was this conversation handled? A By telephone.

Q And did you call him? A I did. He returned my call.

[fol. 16] Q And did you identify yourself? A Oh, yes.

Q Did he identify himself? A Oh, yes.

Q Well, can you give us the date on which you had this telephone call? A October the 8th, 1965.

Q And now tell us what you said and Mr. Holroyd said. A I asked Mr. Holroyd for recognition in bargaining. Discussed what we considered an appropriate unit. Told Mr. Holroyd that department heads were at that time not yet included in the bargaining, or at least the decision of the Board had not been handed down in those cases; the same Heck's company. And that we had a majority either with or without the department heads, whichever way the Board would rule. I offered also to deliver the cards to him.

Q Did you tell him you had a majority? A Yes.

Q What did he say, if anything? A He said we should send, I said we would have to confirm it in writing. He said, go ahead and do it and he'll give me the answer later on.

Q Did he ever ask you to see the cards? A No.

[fol. 17] Q Did anyone associated with Respondent ever ask you to see the cards? A No.



**TRIAL EXAMINER:** You told him you had cards for a majority of the employees?

**THE WITNESS:** Yes. Either with or without the department heads, which at that time had not been settled in another Heck's case before the Board.

**TRIAL EXAMINER:** Uh-huh.

**BY MR. GRAVITT:**

**Q** We have your letter here of October the 25th, as GC 4, to Mr. Holroyd. Did he ever answer that letter?

**A** No, he did not.

**Q** Have you ever heard from the company since that time as to whether they would recognize you or not? **A** No.

\* \* \* \*

[fol. 20] **WOODROW ROOSEVELT GUNNOE**

was called as a witness by and on behalf of the General Counsel and, after being first duly sworn, was examined and testified as follows:

**TRIAL EXAMINER:** Give your full name and address.

**THE WITNESS:** Woodrow Roosevelt Gunnoe.

### DIRECT EXAMINATION

**BY MR. GRAVITT:**

**Q** And your address? **A** 2450 21st Avenue, Parkersburg, West Virginia.

**Q** And are you associated with the Food Handlers, Mr. Spencer's union in this case? **A** Yes, I am.

[fol. 21] **Q** And in what capacity? **A** I'm business agent for Local 347.

**Q** Did you engage in a union campaign of employees here at the Heck's store? **A** Yes, I have.

**Q** And under whose direction? **A** Under Mr. Spencer's.

**Q** Can you tell me, sir, when you began that campaign? **A** Yes. In early 1965. The first card was signed on February the 25th.

Q Of what year? A 1965.

Q 1965. I see, sir. Directing your attention to October, 1965, were you in the Heck's store in Ashland? A Repeat that question please.

\* \* \*

[fol. 33] JACK L. BROOKS

[fol. 34] was called as a witness by and on behalf of the General Counsel and, after being first duly sworn, was examined and testified as follows:

### DIRECT EXAMINATION

BY MR. GRAVITT:

Q State your name and address please. A Jack L. Brooks, 942 Hazelwood Avenue, Charleston, West Virginia.

Q And what is your occupation? A Business Representative.

Q Of what union? A For the Food Store Employees Union, Local 347.

Q How long have you been in that work? A About eight years.

Q Did you work with Mr. Gunnoe in the union campaign regarding the Heck's store here in Ashland? A Yes, I did.

\* \* \*

[fol. 35] RAY DARNELL

was called as a witness by and on behalf of the General Counsel and, after being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: State your full name and address for the record.

THE WITNESS: Ray Darnell, 5102 Frederick Drive, Charleston, West Virginia.

### DIRECT EXAMINATION

BY MR. GRAVITT:

Q And are you associated with Heck's in this case? A Yes, sir.

Q In what capacity? A Operations manager.

Q And how long have you served in that capacity?

A About three years.

Q And are you acquainted with the operations of the Heck's store here in Ashland? A Yes, sir.

[fol. 36] Q And do you handle the personnel records for that store or are they under your supervision? A Yes, sir.

Q How long have you done that? A For about three, four years.

Q Were you engaged in making the decision not to recognize the union in this case? A No, sir.

Q Who made that decision if you know? A It was turned over to our counselor Mr. Holroyd.

Q Mr. Holroyd. Did you turn it over to him? A Yes, sir.

Q Then you followed his advice? A Yes, sir.

Q And discussed the matter with him at various times? A Yes, sir.

\* \* \* \*

[fol. 38] Q And your version of the unit was that it was appropriate without the department heads and you haven't changed that position. Is that right? A No, sir.

Q Sir? A No, sir.

Q Well, what is your position?

TRIAL EXAMINER: He hasn't changed it.

THE WITNESS: I haven't changed it. That was his question.

MR. GRAVITT: You haven't changed it. I see. Yes.

\* \* \* \*

[fol. 44] TRIAL EXAMINER: Well, you will stipulate that these forms are taken from the company's files won't you?

MR. HOLROYD: Yes, sir.

TRIAL EXAMINER: Yes.

MR. HOLROYD: And as far as we know they are the signatures of the employees. Yes, sir.

\* \* \* \*

[fol. 46] TRIAL EXAMINER: Mr. Darnell, do you  
[fol. 47] know a William Morris?

THE WITNESS: Mr. Morris worked for Heck's. He isn't presently employed.

TRIAL EXAMINER: On the record.

I will receive the card of William Morris, also who signs his authorization as Bill Morris, but I'm satisfied with the comparison of the last name at any rate that it's an authentic signature, and in view of the fact that he's not available, his whereabouts are not known, I will receive his card. That's GC 5-4B and 4A. It's the w-4 form?

[fol. 50] DORIS J. CLARE

was called as a witness by and on behalf of the General Counsel and, after being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Give us your full name and address.

THE WITNESS: Doris J. Clare, 3918½ Winchester Avenue, Ashland, Kentucky.

### DIRECT EXAMINATION

BY MR. GRAVITT:

Q Where are you employed? A Heck's.

Q That's here in Ashland? A Yes.

[fol. 51] Q And how long have you worked there? A It will be two years in March.

Q Two years in March? A Uh-huh.

Q And were you working there all during 1965? A No. I came to work in March of 1965.

Q March of 1965 you began working for them and worked for them throughout that year of 1965? A Yes.

Q Still there? A Yes, sir.

Q In what department do you work? A Housewares.

Q Now, on or about May 24, 1965, did you attend a



meeting in which Fred Hadead talked to employees? A I guess if he had one I attended it if I was at work.

Q It's your best recollection on the matter? A I don't know.

Q Beg your pardon? A I don't know. I guess I did.

Q That's your best recollection, that you attended the meeting? A Well, if I was there at the store I did.

[fol. 52] TRIAL EXAMINER: Well, can you remember if anything was said at all about the union?

THE WITNESS: Yes, there was.

TRIAL EXAMINER: Was it for or against the union?

THE WITNESS: He just told us we could sign all of the cards we wanted to sign.

TRIAL EXAMINER: Go on.

BY MR. GRAVITT:

Q And then what else did he say after that? A He [fol. 53] said we could sign all the cards that we wanted to sign. That it didn't make any difference, but that we still had to do our work. And that he was in at one of the other stores and one of the girls wasn't doing something or the other, I don't know what it was, and so she told him she didn't have to when he asked her so he fired her.

TRIAL EXAMINER: Did you get that answer? Would you read it back to me?

(Pending answer read)

THE WITNESS: Due to the fact that she had signed a union card. And that's why she said she didn't have to do what, whatever it was. That's where they get the wrong impression.

TRIAL EXAMINER: I see. In other words, he said she told him she signed a union card and that's why she didn't have to do any work. So he fired her.

THE WITNESS: Yeah. That's where a lot of them are getting the wrong impression. They're telling them they don't have to do this and don't have to do that.

TRIAL EXAMINER: All right.

BY MR. GRAVITT:

Q Did he identify this store in which the girl was fired as the Parkersburg store? A He probably did. I don't remember.

Q That's your best recollection? A That's my best recollection.

[fol. 54] Q And this girl had told him that she had signed a card. And then did he say he fired her on the spot? A Yeah.. That's what Mr. Hadead told the employees.

MR. HOLROYD: That's not her testimony. I'm going to object to that, Your Honor.

TRIAL EXAMINER: He said he fired her. Now, where did you get this on the spot business?

THE WITNESS: Well, that's what he said. He said he fired her on the spot.

BY MR. GRAVITT:

Q Who said that? A Mr. Hadead.

Q I see. Now, did you ever know of anyone by the name of Robert Mitchell? A Yes, I did.

Q And who is he? Or, who was he at the time he was working at Heck's, in the store? A First he was department head of jewelry, and then he was assistant manager.

Q And did he have conversations with you concerning the union? A Yeah. Me and Bob, we talked quite a bit.

Q And say in the early part of October, 1965, did you have conversations with Mr. Mitchell concerning the union? A Yes, I guess so.

Q Well, now I want you to give me your best recollection. You did talk with him? A Yeah. I, like—

Q Now, tell me what you recall Mr. Mitchell saying to you and what you said to him on this occasion, the best you can remember. A Well, I talked to him several times. Or I talked to him about it.

Q Well, just tell me about all of them please. Do you recall them? I know it's been a long time. Just take your time. A Well, we just, we just talked about it. And he said everybody to their own opinion. If that's what I

wanted that's fine. He said at one time he was for unions, but he wasn't. But that was quite a few years ago whenever he worked in different kinds of work. And he thought, well, more or less that we didn't need a union down there. But if that's what we wanted that's OK.

Q Uh-huh. Did he ever mention Mr. McCann's name in any of these conversations? A No.

Q Did he say anything about the Food Handlers Union trying to get in the store? A Who? Mr. Mitchell?

Q Yes. A I brought it up.

[fol. 56] Q Uh-huh. What did he say about it? A Really I don't know.

Q Did he mention about union cards to you? A Yeah. At one time he said they pretty well knew who had signed and who hadn't and that—

Q I didn't get that first part. Would you take that a little slower and let me have that again, please. A I forgot what I said. He said that they pretty well knew who had signed and who hadn't. And when I signed there was only a few of us left that hadn't signed. And when I signed then that was, that was enough. I mean, you know, to give them a majority.

Q That's what Mr. Mitchell told you? A Yeah. I mean, well, in round about words, yes, I guess.

Q I see. Uh-huh. Do you recall him saying that when you signed, well, that put the camel over the hump? A Camel over the hump. Uh-huh.

Q How was it he said it? A When I signed that put the camel over the hump.

Q I see. Now, think if you can, and recall anything that Mr. Mitchell said to you about Mr. McCann, the store manager? A Well, the only thing Mr. Mitchell ever said to me about Mr. McCann was that at the time whenever they said that Mr. McCann was fired. That was the only time that Mr. Mitchell ever mentioned anything to me about Mr. McCann as far as I remember.

[fol. 57] Q And what did he say? A Well, we had a discussion over it.

Q You and Mr. Mitchell? A Well, yeah, in a round about way. There was several of us there.

Q And what did Mitchell say? A Well, he said that we weren't going to do him like we did Mr. McCann.

Because Mr. McCann had been with the company a long time and for him to get fired over it, and from then on we would go by the rules and there wouldn't be no, no other way.

Q Getting fired over it. Can you explain that a little more? What did he say? A Well, at that time the union, we had had quite a little fracas over the union. And they, that's what they said. Now, that was just hearsay more or less.

Q Uh-huh. A Because that don't come right out. But they said Mr. McCann was fired and that was the reason why.

TRIAL EXAMINER: What was the reason he was fired?

THE WITNESS: Because of the union and the employees.

TRIAL EXAMINER: When was he fired?

THE WITNESS: When? Back in '65 I guess. Yes. '65.

[fol. 58] Q (By Mr. Gravitt) Well, you don't know whether he was ever fired or not do you? A No, I don't.

Q You're testifying as to what Mitchell told you? A No, Mitchell didn't tell me. It was just a saying that Mr. McCann was fired. Mitchell didn't know for sure himself because they hadn't told him as far as I know.

TRIAL EXAMINER: Off the record.

(Discussion off the record)

TRIAL EXAMINER: On the record.

Q (By Mr. Gravitt) Mr. Mitchell was the department head or the assistant manager? A Well, he was the assistant manager at that time.

Q Assistant manager at the time. Will you stipulate that, Mr. Holroyd? That—

MR. HOLROYD: Yes. And we withdraw our, or we move to amend our answer to so reflect that he is a supervisor within the meaning of Section 2 (11) of the National Labor Relations Act, as amended.

MR. GRAVITT: Thank you very much.

Q (By Mr. Gravitt) Now, when you talked to Mitchell and McCann's name was mentioned how long was



that after this first conversation that you told us about.  
A The first conversation where we talked about the union?

Q Yes. A Well, I really don't know.

[fol. 59] Q Well, was it in the same month? A I doubt it. I don't know. It could have been.

Q Well, can you think about anything else he said to you about McCann? A No, I can't.

Q But did he tell you that you people and the union had shafted McCann? A Yes.

MR. HOLROYD: I object to that.

TRIAL EXAMINER: Had what?

MR. GRAVITT: Had shafted McCann over this union.

THE WITNESS: Well, this, what he meant by that

TRIAL EXAMINER: Wait a minute. There was an objection. I'll overrule it because her recollection has been exhausted. Go on. Go on. Explain.

Q (By Mr. Gravitt) Go ahead. Tell us now. A Well, what he meant by that, that was just a phrased used. And me and Mr. Mitchell, we were good friends. And we had a disagreement. But he apcligized to me. Because he was so upset over the matter, too. He was upset because of Mr. McCann leaving.

Q Well, in talking about this union did Mitchell use the words that you and people have shafted McCann? A Yes. Yes, he did. That was a matter of phrase though I imagine. Because that's just the way—

[fol. 60] Q Well, you knew what he was talking about, didn't you? A Why, yeah.

Q In fact, he expressed it in pretty strong language, did he not? A Yeah. He sure did.

Q Well, can you just tell us how he did word that particular phase, the whole thing? We want it in the record. A No, I can't. Because I don't remember it.

TRIAL EXAMINER: Well, then you can ask a leading question.

Q (By Mr. Gravitt) You did give an affidavit to an agent of the National Labor Relations Board, did you not? A Yes, I did. But I don't have it now. So I don't remember it.

Q And you told the truth as to what happened at that time? A That's right. Do you want me to read it?

Q And it was in your mind a little better at that time than it is now, was it not?

TRIAL EXAMINER: You don't have to ask her questions if you want to refresh her recollection. You can show her the affidavit.

Q (By Mr. Gravitt) Yes. Look right here where it says that. Read that in there and then tell me what [fol. 61] Mitchell told you. A How far down do you want me to read?

Q Well, just tell me what he told you. A Well, he said, he said, let me tell you one goddamn thing. You son-of-a-bitches shafted McCann. And you're not going to shaft me.

Q And that's what he said? A That's what he said.

\* \* \* \* \*

[fol. 72] Q (By Mr. Gravitt) Now, directing your attention to on or about October the 8th, 1965, do you recall seeing Mr. Darnell in the store? A Yes, I do.

Q And did Mr. Darnell talk to you on this occasion? A Yes, he did.

Q And did he talk to you during work? A Yes, sir.

Q And was anybody with Mr. Darnell when he spoke to you? A Yes. Mr. McCann.

Q And what did Mr. Darnell say to you? A He just asked that he understood that we were wanting to be represented by the other union. He gave the local.

Q The— A And—

[fol. 73] Q He gave the Food Handlers Local 347? A Yeah.

Q All right. A And—

TRIAL EXAMINER: Was he talking just to you or to all the employees?

THE WITNESS: He talked to me; myself.

TRIAL EXAMINER: Just you privately?

THE WITNESS: Yes.

TRIAL EXAMINER: All right. Go on.

THE WITNESS: And I told him yes. I explained why at the time I did it.

Q (By Mr. Gravitt) Well, how, did he ask you why?  
A Huh?

Q Did he ask you why? A No, I don't think he asked me why. I told him I would like to explain the answer to him why I did. And he said he would be glad to listen to me.

Q Did he make any further comments to you? A He told me that everybody to their own opinion and he didn't want any hard feelings. I mean there would be no hard feelings because of this. And I told him, no, I didn't want none either.

Q And did you say he asked you if you wanted this Food Handlers Local and named the Local 347 to represent you? A He said that he understood that that was what we was wanting.

[fol. 74] Q I see. Did he tell you you wouldn't lose your job over it? A Yes. He told me this had nothing to do, no effect on my job at all or friendship.

Q Or friendship. Had he ever done this before when you had been working there in the store? A You mean ask about—

Q Yes. Come around and ask if you wanted a union?  
A No.

Q Did he give you any explanation as to why he was doing it at this time? A If he did I don't recall.

TRIAL EXAMINER: Well, he didn't ask you if you wanted a union. He just told you that—

THE WITNESS: Yeah.

TRIAL EXAMINER: That he understood that the employees wanted it.

THE WITNESS: That we wanted to be represented by it.

TRIAL EXAMINER: That the employees wanted to be represented by it. He never came out and asked you if you wanted a union to you?

THE WITNESS: No. And I said, in other words you want to know if I signed or if I didn't. Yes. That I'd signed and that I would like to explain why I did. And he said he would be glad to hear it.

[fol. 75] TRIAL EXAMINER: Well, did he, you answered that. You said, in other words you want to know if I signed it or if I didn't. Did he say anything at that point or did you just continue to talk? Did he say yes I want to know whether you signed?

THE WITNESS: No, I don't think he said that.

TRIAL EXAMINER: All right.

THE WITNESS: Because I just told him I wanted to explain why I did it.

Q (By Mr. Gravitt) I show you GC 5-5 for identification, and ask you to look at it and tell me if that's your signature on that card? A Yes.

Q You read it and signed it? A Yes, I read it and signed it.

Q And what date's on the card? A 10th of the 6th of '65.

Q And that's the date you signed the card? A That's the date I signed.

[fol. 77] CROSS EXAMINATION

Q (By Mr. Holroyd) Who asked you to sign that, Doris? A Oh, I don't know their names. They came up to the house to see me.

Q Do you know an employee by the name of Paul France? A Yes, sir.

Q Was he in this group that came up and asked you to sign the card? A No.

Q He wasn't? A No. It was just the representatives of the union.

Q Of the union? A They was up to my house.

Q Did you ever talk to Paul France about the union? [fol. 78] A No, I never talked to him about it. But I knew he was for it.

Q Did he tell you he was for it? A Yeah.

Q Did he tell you that he thought it would be a good idea if you joined? A No.



MR. GRAVITT: Objection.

TRIAL EXAMINER: Well, wait a while. Wait a while. Wait a while. What's the objection?

MR. GRAVITT: It isn't material what one employee told another employee concerning her union card or any union card.

MR. HOLROYD: If you'll read your subpoenaed exhibit there, Bill, you'll find out that this is not another employee.

TRIAL EXAMINER: Who in France?

MR. HOLROYD: Department head.

TRIAL EXAMINER: Was France a department head? All right.

Q (By Mr. Holroyd) Did he ever tell you that he thought it was a good thing, a good idea that you sign a union card? A He told me that he was for it and that he thought it would be a good thing if they got it in.

Q Was this before you signed it? A Huh?

[fol. 79] Q Was this before you signed the card? A Yeah. But I'd talked to him a lot about it.

Q You say you don't remember who asked you to sign the card? Do you see a gentlemen sitting around— A I know that Mr. Cass—

Q Mr. Cass. Well, tell us—

MR. GRAVITT: Can we have him identify himself? She's motioning to a gentlemen in this room.

MR. HOLROYD: We called his name out. Cass.

TRIAL EXAMINER: Mr. Camp?

MR. HOLROYD: Cass. Mr. Cass. He's in this room, Will he identify himself?

MR. CASS: Right here.

TRIAL EXAMINER: Well, he doesn't have to for this record. What was the question? Whether, who got her to sign the card?

MR. HOLROYD: Yes, that was the question. Who asked her to sign.

TRIAL EXAMINER: I thought you said France asked her to sign the card. I'm getting confused.

MR. HOLROYD: No.

TRIAL EXAMINER: Did France—

**MR. HOLROYD:** She said he did not ask her to sign it. And I asked her if she said anything prior to his signing whether or not she had signed. And she—

**TRIAL EXAMINER:** All right. Mr. Cass asked her to sign.

[fol. 80] **Go on. Who is Mr. Cass?**

**THE WITNESS:** He's a representative of the union.

**Q (By Mr. Holroyd)** And would you say Mr. Gunnoe, this good looking fellow in the corner, was also there? **A** Yeah, he was there.

**Q** Now, would you tell us as best you can remember what the conversation was you had with them in reference to signing the union card? What they said to you and what you said to them.

**MR. GRAVITT:** I object, Your Honor. This card is not ambiguous. It's a clear designation of the union to represent her. She said she read it, she signed it. And I object to this as being immaterial.

**TRIAL EXAMINER:**—Overruled. Go on.

**Q (By Mr. Holroyd)** Go ahead. **A** Well, I don't remember everything.

**Q** Well, just tell us what you do remember, Doris, please. **A** Well, they just talked to me and they explained it. And we talked about the good points, the bad points, and what we thought was best about the union, and the company, and this and that. I mean just—

**Q** Did they say anything would happen if you did or did not sign a union card? **A** No.

\* \* \* \*

[fol. 91] **TRIAL EXAMINER:** Go on. I'm getting into, I admit, a rather touchy area. But I think the best way to clear it up is to ask the witness why she signed the card.

**THE WITNESS:** I signed the card because I didn't like how things were. I didn't like Paul France. I didn't like how he ran things. That is my reason why.

**TRIAL EXAMINER:** And you signed a card. Well, the fact that Paul France said it was a good idea to have a union, did that have any effect on you signing your card?

[fol. 92] **THE WITNESS:** No. It didn't matter what he said.

**TRIAL EXAMINER:** All right.

## REDIRECT EXAMINATION (Further)

Q (By Mr. Gravitt) Well, you understood what the card meant when you read it did you not? A Yes, I did.

Q And you wanted the union in there to change a few things and to make it better, did you not? A Yes, I did.

\* \* \* \*

[fol. 93]

RUBY RIFFE

was called as a witness by and on behalf of the General Counsel and, after being first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

Q (By Mr. Lawrence) Will you give us your name and address for the record please? A Ruby V. Riffe, 2456 Henderson Street, Ashland, Kentucky.

Q And where are you working now? A I work at Heck's store.

Q And when did you begin to work for Heck's? A I started at Heck's in July; before the store opened in August. That was in '63.

Q And this is the Ashland store that we are talking of? A Yes, sir.

\* \* \* \*

[fol. 94] Q (By Mr. Lawrence) Mrs. Riffe, I show you what's been marked for identification as General Counsel's Exhibit 5-6, and ask you if you know whose card that is? A That's the card I signed.

Q And is that your signature appearing on the card? A Yes, it is.

\* \* \* \*

[fol. 95] Q (By Mr. Lawrence) Directing your attention to May 24, 1965, had, did you attend a meeting with a Mr. Hadead? A Yes, I did.

Q And where was this meeting held? A In the lounge.

Q This is the lounge of the Ashland store? A That's right.

Q Were you working that day? A Yes, I was.

Q And approximately when was the meeting held during the day? A Well, I don't know. I've forgotten what

turn I was on. I don't know, remember what turn I was on. But Mr. Fred Hadead came down. He came in the lounge and sat down on the corner of a table. And in the course of the meeting he said that he didn't care how many cards we had signed we still had to do our work. And he said one girl came up to him in Parkersburg and said she's signed a card and he fired her on the spot.

[fol. 96] Q Was this meeting held during your work time? A Yes, it was.

Q On the 24th? Directing your attention now to October 8, 1965, did Mr. Darnell talk to you on that day? A Yes, he did.

Q And did you talk about the union on that day? A Yes, we did.

Q As best you can recall what Mr. Darnell say to you? A I was on day turn and it was just previous before I went home. It was late in the evening. He and Mr. McCann came back. And I was in my department. They came up. And Mr. McCann told Mr. Darnell this is Ruby Riffe. And he spoke to me, Mr. Darnell spoke and he said, Ruby, I'd like to ask you a few questions. A few, a personal question. Just answer yes or no. He said, I won't ask you what you had for breakfast, but he said, just answer yes or no. He said, are you aware that the Food Handlers Union is, uh, let me see. The words he said, he said, the Food Handlers Union was coming into the store. Do you want to be represented by Heck's or the Food Handlers. That's the words he used. And I said, Yes, sir, I do. He said, he checked—

TRIAL EXAMINER: You do what? You want represented?

THE WITNESS: Be represented by the Food Handlers or Heck's. And I said, yes, sir, I do.

TRIAL EXAMINER: Well, what did that mean?

THE WITNESS: I wanted to be represented by the Food Handlers. I said yes, sir. Before he finished his sentence I said yes, sir, I do. And he checked a mark. He had a pencil and a pad in his hand.

TRIAL EXAMINER: He must have said do you want to be represented by the Food Handlers first if you answered yes before he finished the sentence.



**THE WITNESS:** Whenever he said, I said, he said do you want to be represented, he said, by Heck's or the Food Handlers. And before he finished the sentence I said yes, sir, I do. And he thanked me and went back to the next department.

\* \* \*

[fol. 105]

### CROSS EXAMINATION

\* \* \*

[fol. 109] **THE WITNESS:** Sir?

**TRIAL EXAMINER:** Are you sure it wasn't said by Mr. Haddad?

**THE WITNESS:** I'm not sure. I don't want to tell something I don't know.

**THE TRIAL EXAMINER:** All right, next question.

**Q (By Mr. Holroyd)** Ruby, we've got in here an authorization card from you, General Counsel's Exhibit 5-6, which was signed on, on March the 6th, 1965. Now, had you signed, prior to that time had you signed a union card for any other union?

**MR. GRAVITT:** Objection. It isn't material.

**MR. HOLROYD:** It is material.

**MR. GRAVITT:** Beyond the scope of the direct examination.

**TRIAL EXAMINATION:** Well, is that your defense? That you have conflicting claims here?

**MR. HOLROYD:** Yes, sir, this is part of it.

**TRIAL EXAMINER:** Well, why didn't you so state in your letter? I think you'll have to get up and testify to that effect because there's no evidence to that effect that that was your motivation.

**MR. HOLROYD:** All right. Well, we have witnesses who are prepared to testify on that, sir.

**TRIAL EXAMINER:** Are you prepared to testify on that?

**MR. HOLROYD:** Me personally?

[fol. 110] **TRIAL EXAMINER:** Yes.

\* \* \*

[fol. 112] **Q (By Mr. Holroyd)** Ruby, did you sign a union card for any other union prior to signing this card for the Food Handlers Union?

MR. GRAVITT: Objection.

TRIAL EXAMINER: Overruled.

THE WITNESS: Sometime before, yes.

Q (By Mr. Holroyd) Can you recall how long before?

MR. GRAVITT: Object. The card's the best evidence.

TRIAL EXAMINER: You have a continuing objection. Go on.

THE WITNESS: Well, I don't know what the date, when the date was.

Q (By Mr. Holroyd) Well, how long before?

TRIAL EXAMINER: A month or two or three?

THE WITNESS: Well, now let's see. I can almost tell you when it was. I went to work there in July. And I would say it was probably, it was about the first of December I would say; thereabouts. I, uh, I'm just not positive on that date now. I'm just saying it was about the first of December.

[fol. 113] TRIAL EXAMINER: '63?

THE WITNESS: Of, yes. I went to work in March and this was in '63.

Q (By Mr. Holroyd) '63 or '64? This card was signed in March of '65. A Are you speaking of this other one?

Q Yes. A That one I signed on March the 6th.

Q Of 1965? A That's right.

Q When was the Retail Clerks card signed? A In, I'd say about the first of December in '63.

Q In '63.

TRIAL EXAMINER: A year and a half earlier?

THE WITNESS: Yes.

Q (By Mr. Holroyd) All right. That was for the Retail Clerks that you signed it? A Retail Clerks, yes.

Q Were the Retail Clerks still doing anything in the store at that time? A Sir?

MR. GRAVITT: Objection to that question.

TRIAL EXAMINER: Were the—

[fol. 114] Q (By Mr. Holroyd) Well, let me rephrase it. Were the Retail Clerks still active, talking to the employees, or passing out cards, or anything during this period that the Meat Cutters or Food Store Employees were getting cards signed?

MR. GRAVITT: Objection.

TRIAL EXAMINER: Well, I'll permit it. It's kind of border line.

Were there any agents of the Retail Clerks around in March of '65 or only the Food Handlers?

THE WITNESS: The Food Handlers.

TRIAL EXAMINER: Just the Food Handlers. All right.

[fol. 118]

AUDREY SMITH

was called as a witness by and on behalf of the General Counsel and, after being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Give us your full name and address. Give us your full name.

THE WITNESS: Audrey Jane Smith.

TRIAL EXAMINER: Audrey Jane Smith?

THE WITNESS: Yes.

TRIAL EXAMINER: Where do you live, Mrs. Smith?

THE WITNESS: Renee Street, in Flatwoods.

TRIAL EXAMINER: How long have you worked for Heck's?

THE WITNESS: I went there the day after Mothers' Day in '65, I believe.

TRIAL EXAMINER: It would be May, '65?

THE WITNESS: Uh-huh.

TRIAL EXAMINER: And you're still there?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: And you've been there all the time?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Go ahead.

### DIRECT EXAMINATION

Q (By Mr. Lawrence) Mrs. Smith, you were working at Heck's all during the period of 1965 after you came there in May?

[fol. 119] TRIAL EXAMINER: She's already answered that.

THE WITNESS: Yes.

Q (By Mr. Lawrence) In what department do you work? A Housewares.

Q And who was the department head of that department in 1965? A Mr. Joe Weekley.

TRIAL EXAMINER: Joe who?

THE WITNESS: Joe Weekly.

[fol. 120] Q (By Mr. Lawrence) I'm going to show you what has been marked for identification as General Counsel Exhibit 5-7, and ask you if you can tell me whose card that is? A It's my card.

Q Is that your signature that appears on the card? A Yes, sir.

TRIAL EXAMINER: You signed it on the date shown there on?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: And what date is that?

THE WITNESS: June, June the 13th, '65.

Q (By Mr. Lawrence) Mrs. Smith, directing your attention to October 8, 1965, did Mr. Darnell talk with you on that date? A On the 8th of?

Q October, 1965. On or about that day. A It was around the first of that month. I don't know just what date it was.

Q Around the first of October, 1965? A Yes.

Q And you did have a conversation with Mr. Darnell at [fol. 121] that time? A Well, it was just when he came, they came thru. Mr. McCann and Mr. Darnell came thru and was asked if I wanted to be represented by the Food Handlers.

Q Well, now would you tell the Trial Examiner what Mr. Darnell said to you on this day and what, if anything, you said to him in reply? Just take your time and try to reconstruct the conversation that you had together. A Well, he, Mr. McCann introduced us; introduced me to Mr. Darnell. And said that he would like to ask me a question. And he just asked me if it, if I knew that there were, they were going around wanting them to be represented by the union, you know, to represent the persons.



And I said, yes, sir. And I said, yes, sir, I want to be represented by it. He asked me if I wanted to be represented by the union. And I said, yes, sir. And that's all. I mean there wasn't no more.

Q Did he mention what union he was talking about?  
A The Food Handlers Union is all.

Q I see. And when he asked you this question what was your reply to him? A I said, yes, sir. And that's all. I walked back to my job.

Q Did he ask you why, tell you why he was asking. A No.

[fol. 122] Q He was asking this question? A, No, sir.

TRIAL EXAMINER: Did you ask him why he was asking you?

THE WITNESS: No, sir.

TRIAL EXAMINER: Did he say anything about your job being safe no matter what your answer was?

THE WITNESS: No, sir.

TRIAL EXAMINER: And wouldn't affect your job?

THE WITNESS: No, sir.

TRIAL EXAMINER: Whether you were for the union or against the union?

THE WITNESS: No, sir.

[fol. 127] REDIRECT EXAMINATION

Q (By Mr. Lawrence:) Directing your attention once more to the conversation that you had with Mr. Darnell, was he looking right at you when he was speaking to you? A Well, I guess so, sir. He walked up there to speak to me. I mean to talk, I mean.

TRIAL EXAMINER: Well, was he reading from a paper when he talked to you?

THE WITNESS: No, sir.

TRIAL EXAMINER: Or was he just talking in a usual way?

THE WITNESS: No. He was talking his usual way.

[fol. 128]

**MARLENE CARTER**

was called as a witness by and on behalf of the General Counsel and, after being first duly sworn, was examined and testified as follows:

**TRIAL EXAMINER:** Give us your full name and address.

**THE WITNESS:** Marlene Carter. 419 Cardinal Road, Kenwood Acres, Russel, Kentucky.

**TRIAL EXAMINER:** How long have you worked for Heck's?

**THE WITNESS:** Four years this coming October, sir.

**TRIAL EXAMINER:** You still work there?

**THE WITNESS:** Yes, sir.

**TRIAL EXAMINER:** You've been there all the time since you started work?

**THE WITNESS:** Yes, sir.

**TRIAL EXAMINER:** All right.

**DIRECT EXAMINATION**

**Q** (By Mr. Lawrence) In what department do you work, Mrs. Carter? **A** Clothing.

**Q** And who was the department head of the clothing department in 1965 when you were there? **A** I think Mr. Imus, Joe Imus.

[fol. 129] **Q** Did you sign a union authorization card? **A** Yes, sir.

**MR. LAWRENCE:** I would like to have this card marked for identification as General Counsel's Exhibit—

**TRIAL EXAMINER:** 8. 5-8.

**MR. LAWRENCE:** 5-8.

(The above-referred to document was marked as General Counsel's Exhibit No. 5-8 for identification.)

**Q** (By Mr. Lawrence) I'm going to show you what has been marked for identification as General Counsel's—

**TRIAL EXAMINER:** Let me see the card.

Did you sign this card on the date shown thereon, GC 5-8?

**THE WITNESS:** Yes, sir.

Q (By Mr. Lawrence) Directing your attention to May 24th in 1965, did you attend a meeting with Mr. Hadead? A Yes, sir.

Q And where was this meeting held? A In the store lounge.

[fol. 130] Q Was it during work time? A Yes.

Q Or other time? A Work time.

Q Now, what do you, what did Mr. Hadead say at that time about the union? A He said that we could sign all the cards that we wanted to, but just because we signed a card this was no reason that we didn't have to do our work. Because he had a girl tell him that in one of the other stores and he fired her.

Q Now, directing your attention to October 8th—

TRIAL EXAMINER: Had a girl tell him what? We want to get the story.

THE WITNESS: That's all.

\* \* \*

Q (By Mr. Lawrence) Now, directing your attention to October 8, 1965, did a Mr. Darnell speak with you? A Yes, sir.

Q And was this during work time or at some other time? A Working time, sir.

Q And where did this conversation occur? A In my department.

[fol. 131] Q And what did Mr. Darnell say to you at this time? A He told me he would like to ask me a question. And he'd like for me to give him either a yes or no. And he asked if I was for the union. I said, yes, sir, I signed a card. He said, thank you and walked off.

Q Now, did he give you any explanation as to why he was asking you these questions? A Not to my knowledge he didn't, sir.

Q Did he say anything at this time about your not losing your job if you answered him or if you don't answer him? A No, sir.

Q Was he looking right at you when you were having this conversation with him? A Yes, sir.

TRIAL EXAMINER: Well, looking at her, that doesn't help. He could be reading from a paper and still looking at her. Was he reading from a paper at the time?

THE WITNESS: I do believe he had a clip board or something in his hand, sir. Now, if he was reading that off, I don't think he was.

TRIAL EXAMINER: All right.

\* \* \* \*

[fol. 135]

JEANELLE GATES

was called as a witness by and on behalf of the General Counsel and, after being duly sworn, was examined and testified as follows.

TRIAL EXAMINER: Give us your full name and address.

THE WITNESS: Jeanelle Gates.

TRIAL EXAMINER: Jeanelle. How do you spell that?

THE WITNESS: J-E-A-N-E-L-L-E.

TRIAL EXAMINER: All right.

THE WITNESS: And I live at 1015 Russell Street, Ashland, Kentucky. My phone number is—

TRIAL EXAMINER: No, we don't need your phone number.

THE WITNESS: Well, I thought you said you needed my phone number.

TRIAL EXAMINER: When did you start to work for Heck's?

THE WITNESS: It was about a week before Thanksgiving.

TRIAL EXAMINER: November of what year?

THE WITNESS: '64.

TRIAL EXAMINER: '64. You still work there?

THE WITNESS: Yes.

TRIAL EXAMINER: Been there all that time?

THE WITNESS: Yes, sir.

\* \* \* \*

[fol. 136]

DIRECT EXAMINATION

\* \* \* \*

Q (By Mr. Lawrence) Did you sign that card on the [fol. 137] date indicated? June 19, 1965? A Yes, sir, I did.

Q Is that your signature? A Yes, sir.

\* \* \* \*



Q (By Mr. Lawrence) Directing your attention, Mrs. Gates, to October 8, 1965, did Mr. Darnell speak with you on that day? A Yes, sir, he did.

Q What, where did this conversation occur? A I was in the infants aisle I believe.

Q By the entrance you mean what? A The infants. See, I work in the infants department and the lingerie department. And I was in the infants department at the time.

Q And was this during work time? A Yes, sir.

Q Now, what exactly did Mr. Darnell say to you at this time and what did you, if anything, say to him? A Well, he just walked around to where I was and Mr. McCann was with him. And Mr. McCann introduced [fol. 138] me to Mr. Darnell. I remember Mr. McCann introducing me as Jeanelle Roberts. And he just said he would like to talk to me a minute. And asked me if, if I wanted the Food Handlers to represent me. And I said, yes, sir, I think we should have someone to represent us. And then he asked me how long I had worked there. And I told him that I had worked there, how long I had been there. And I told him that I had worked seven straight months before I was even tardy or absent from work. And he told me that was a good record and that I had done a good job. And he thanked me and then he just, just general conversation. It wasn't anything about the union or anything. And he thanked me then and went on and talked to some one else.

Q Did either Mr. Darnell or Mr. McCann give you any reason why they were asking you about whether you wanted the Food Handlers to represent you? A No. No, they didn't.

Q Did either— A They didn't say anything else to me.

Q I'm sorry? A I said they didn't say anything else to me about it.

Q Did they mention anything about how long you were going to continue to work there?

MR. HOLROYD: Objection to the leading nature of the question.

[fol. 139] TRIAL EXAMINER: Let me see your exhibit please.

Did Mr. Darnell read from a paper when he was talking to you?

THE WITNESS: I don't remember whether he had a paper or not.

TRIAL EXAMINER: Did he say to you you are probably aware that the Food Handlers union are trying to organize this store?

THE WITNESS: I don't remember him saying that. I just remember his asking me if I wanted them to.

TRIAL EXAMINER: Did he say they had made a demand on the company stating that they had a majority of our employees who desire them to represent them?

THE WITNESS: No, he didn't say that to me at all.

TRIAL EXAMINER: Did he say do you want the union to represent you?

THE WITNESS: He said that.

TRIAL EXAMINER: He said that?

THE WITNESS: He said do you want the union to represent you.

TRIAL EXAMINER: That part you remember?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Did he say in no way would this have a bearing on your job? Did he say that?

THE WITNESS: No, he didn't say that to me.

[fol. 140] TRIAL EXAMINER: Did he say you do not have to answer this question? Did he say that to you?

THE WITNESS: Now, he may have. Now, I wouldn't swear to it because I'm not sure.

[fol. 143]

### CROSS EXAMINATION

Q (By Mr. Holroyd) Mrs. Gates, now who asked you to sign this card? A Miss Perry.

Q Ruby Perry? A Yes. She came to my home on two different occasions.

Q Tell us what she said when she talked to you and asked you to sign. A Well, she came to my home and my husband was there. And she talked to me about the union. I had heard others talking about it. But I had never, you know, discussed it with anyone before; until she came to see me.

Q What conversation, can you tell us, as best you can recall, exactly what she said? A Well, she just discussed, I mean, the good points of the union and, and explained to me what, what it was all about. I don't remember just exactly. I mean the words. And I know I told her I just, I just didn't want to talk about it then. I mean I couldn't. It was right at dinner time. I had just gotten home from work. I was getting ready to prepare dinner. And so she wasn't there but just a few moments. And then she said, well, she would come back later. So I went home another time. When I got home from work, and she was parked [fol. 144] there in the drive way waiting for me to, to get home. And so she came in and was talking to me about it again. And so I told her, well, I hadn't made up my mind. And so she left the card with me. And I think that was along sometime in May. And then it was a good month later then before that I decided then to sign the card. And after I'd signed it and sealed it up in an envelope I kept it about a week before I even mailed it.

Q Well, did you talk to anybody else about signing that card other than Mrs. Perry? A No. Just different one. I mean employees, employees that had already signed cards. And, of course, I had talked with them about it on different occasions.

Q Well, had anybody said anything would happen to you if you didn't sign the card? A No.

Q That you would be discharged or anything? A No.

Q Did you know Mr. France? A I just know who he was. I mean working in the store. I had no conversation with him or anything.

[fol. 145]

RUIE PERRY

was called as a witness by and on behalf of the General Counsel and, after being first duly sworn, was examined and testified as follows:

### DIRECT EXAMINATION

Q (By Mr. Gravitt) Would you state your name and give us your address please? A Ruie Perry, 1712 Heights Street, Parkersburg, West Virginia.

Q During—

TRIAL EXAMINER: How do you spell that first name?

THE WITNESS: R-U-I-E.

Q (By Mr. Gravitt) During 1965 did you solicit union cards here for the Ashland, for the Heck's employees at the Ashland store? A Yes, I did.

Q You had some signed? A Yes, sir.

Q (By Mr. Gravitt) Now, you look at GC 5-10, and tell me whose union card that is. A Roger Davis.

Q Did you see him sign it? A Yes, sir.

Q And what day did you see him sign it? A On May the 5th of 1965.

Q What day was it now? A May the 4th, 1965.

TRIAL EXAMINER: On 5-4-65. Is that right?

THE WITNESS: Right.

Q (By Mr. Gravitt) Showing you GC 5-11, I ask you if you saw, or whose name is on this card? A Howard Green.

Q Did you see him sign the card? A Yes, sir, I did.

Q And what day did you see him sign the card? [fol. 147] A The 3rd of May, 1965.

[fol. 150] TRIAL EXAMINER: Next question.

Q (By Mr. Gravitt) I show you GC 5-12, and ask you if you can tell me whose union card that is? A Leon, Lester Leon Holstein.

Q Did you see him sign the card? A Yes, sir, I did.

Q On what date? A May the 3rd, 1965.

[fol. 153]

JAMES E. McCANN

was called as a witness by and on behalf of the Trial Examiner and, after being first duly sworn, was examined and testified as follows:



## EXAMINATION

[fol. 155] Q (By the Trial Examiner) These were employed on October 8th and during the following week. Is that what you're saying? A Yes.

Q And were any of these people department heads? A Yes, sir. They're marked.

Q Those were marked department heads. Those were Carter? A No. Cahal

Q Oh, Cahal? A Uh-hum. And Conley.

Q What about Cartwright? Is that a department head? A Cartwright. Yes. Jewelry.

Q Clarke. Is Clarke a department head? A Yes. Her name is Gale Clark, in cosmetics.

Q Colm? A Colm is warehouse.

Q You seem to have more department heads than employees, don't you? A No, sir. We've got seven, isn't there?

Q Roger Davis. Was he a department head? A Yes. Sporting goods.

[fol. 156] Q And Russell Paul France? A Houseware.

Q And Joe Imus. A Clothing. Imes. I-M-E-S.

Q I-M-U-S. Is this all the department heads you had? A Uh-huh.

[fol. 168] MR. HOLROYD: Criswell was a department head, wasn't he?

THE WITNESS: At that time he wasn't.

[fol. 178] CARLTON S. CASS

was called as a witness by and on behalf of the General Counsel and, after being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Give us your full name and address.

Thank you, Mr. Gunnoe.

Give us your name and address.

THE WITNESS: My name is Carlton S. Cass, Elkland, Pennsylvania.

**TRIAL EXAMINER:** Can you identify those cards as cards you saw signed on the dates shown thereon?

**THE WITNESS:** Yes, I can. The first one is—

**TRIAL EXAMINER:** Just a moment. He saw them signed.

[fol. 180]

**JUNE MENSHOUSE**

was called as a witness by and on behalf of the General Counsel and, after being first duly sworn, was examined and testified as follows:

### DIRECT EXAMINATION

**Q** (By Mr. Gravitt) State your name and address.

**A** My name is June Menshouse. I live at 23 Jones Street.

**Q** And where are you employed? **A** At Heck's.

**Q** Did you work there all during 1965? **A** Yes, sir.

**Q** Did you assist the Meat Cutter in organizing em-  
[fol. 181] ployees? **A** Yes, sir.

**Q** And did you get cards signed? **A** Yes, sir.

**Q** I show you GC 5-16 thru 26, and ask you to look at these cards and tell me—

**TRIAL EXAMINER:** Were these signed in your presence by the persons whose names appear thereon on the dates shown thereon?

**THE WITNESS:** Yes, Sir.

**TRIAL EXAMINER:** All of them? Look them over.

**THE WITNESS:** That's correct.

**TRIAL EXAMINER:** You personally know all of the people that signed these cards?

**THE WITNESS:** Yes, sir.

**TRIAL EXAMINER:** And you know that they did sign those cards in your presence?

**THE WITNESS:** Yes, sir.

**TRIAL EXAMINER:** All right. Next question.

**Q** (By Mr. Gravitt) And on the dates on the cards. Is that right? **A** Yes, sir.

[fol. 187] Q (By Mr. Gravitt) Now, I show you what's been marked as General Counsel's Exhibit 5-21, and tell me whose union card that is? A This is Linda Fields.

Q And did she work there in October, to your knowledge? A Yes, sir, she did.

Q In 1965?

TRIAL EXAMINER: Did she sign that card in your presence?

THE WITNESS: Yes, sir, she did.

Q (By Mr. Gravitt) Now, during, you heard that, strike that. You heard the testimony here this morning that the union in this case began organizing the employees in early 1965. Do you recall that? And when did you start getting cards signed for the Meat Handlers, or Food Handlers Local 347? A In April.

Q Of what year? A Of 1965.

Q And you continued working for them right on. Is that right? A Yes, sir.

Q And during that time were you aware of the Clerks trying to organize employees during this particular time? A They had already left out of the store.

Q They weren't there from, say, early 1965 and thru '65? A Well, it was in '64, the latter part of '64 since we had seen anything of the Clerks.

Q And when you got these cards signed by the employees for what union did you get them signed? A For the Food Handlers Union.

[fol. 197] Q Do you know a Mr., strike that. Directing your attention to May 24, 1965, did you attend a meeting, or one of the meetings in which Fred Haddead talked to the employees? A Yes, sir, I did.

Q What did you hear him say? A Well, we had to go to the lounge for this meeting. And Mr. Haddead, when we got in the lounge, half of the employees had gone on over to the—

TRIAL EXAMINER: Well, that's not the answer to the question. Tell him what Haddead said.

**THE WITNESS:** Well, Mr. Haddead said, when we got to the lounge, that he wanted to talk to us about union business that had been going on in the store.

**Q** (By Mr. Gravitt) And what did he say about it? **A** He said as far as he was concerned we could sign all of the cards that we wanted to sign, but because we did it, because we signed a card that was no sign that we didn't have to do our job.

**Q** Yes. **A** And he said, if you don't believe this, he said, I was at the Parkersburg store and a girl came up and said she signed a card and and he said he fired her on the spot.

**Q** Now, are you sure he said that a girl in the Parkersburg store came up and said she signed a union card and he fired her on the spot? Is that what he said?

[fol. 198] **A** He didn't say that.

**Q** Oh, well, tell me what he said. **A** He said that a girl in the Parkersburg, if, he said, if you don't believe me, he said, there was a girl in the Parkersburg store that said she signed a union card and he said I fired her on the spot.

[fol. 200] **TRIAL EXAMINER:** Is this all of the testimony you have on this point?

**MR. HOLROYD:** Well, at best he's got a conflict between his own witnesses. And I move to strike it, Your Honor.

**TRIAL EXAMINER:** Well, suppose we wait until the end of his case and then I will act on any motions.

All right. Next question.

**MR. GRAVITT:** The day is long past when on the advice of legal counsel they come out and give you direct evidence.

**MR. HOLROYD:** Object to that.

**Q** (By Mr. Gravitt) Well, directing your attention to October the 8th, 1965, did Mr. Darnell ask you any questions about the union? **A** Yes, sir.

**Q** Where were you when he talked to you? **A** I was on the floor in the department I worked in.

**Q** Were you being paid for this time? **A** Yes, sir.

**Q** Well, what did he ask you?



[fol. 201] A He said, Mrs. Menshouse, I would like to ask you a personal question. I said, well, providing it's not too personal. He said, well, it's not going to be that personal. He said, I want to know if you were aware that the Food Handlers Union were wanting to represent you employees. And I said, well, whether it would be the Food Handlers or who it would be we should have someone recognize us. And he asked me why did I feel that way.

TRIAL EXAMINER: What did you say?

THE WITNESS: Well, I told him when I came there to the store that the store manager had told me that you were given automatic raises every six months. But I worked there a long time before I got my raise.

TRIAL EXAMINER: And what did he say?

THE WITNESS: Well, he didn't have anything else to say. He said he would like to talk longer but he had some other people to see.

TRIAL EXAMINER: All right.

BY MR. GRAVITT:

Q Did he tell you that he wouldn't fire you again over the union? A He said the questions he asked me wouldn't have any bearing on my job and my answer would be yes or no.

Q Did he tell you anything about the union offering to show him the union cards? A No, sir. He just asked me [fol. 202] if I was aware that the union was wanting to represent us.

Q Did he give you any explanation as to why he was asking you that question? A Outside of what I stated.

Q Well, he didn't ask you did you sign a card, did he? A No, he didn't.

Q And never at anytime during this conversation did he ask you if you'd signed a union card. Right? He simply asked you do you want the Food Handlers to represent you. Is that right? A That's right.

Q Do you know if he asked any employee in the store if they'd signed a union card?

MR. HOLROYD: Objection, Your Honor. It's outside the scope of the complaint.

**TRIAL EXAMINER:** Sustained. That's not the reason. How would she know.

**MR. GRAVITT:** Well, they told—

**TRIAL EXAMINER:** Unless she was there.

**Q** (By Mr. Gravitt) Did you hear him talk to any other employees? **A** No, sir, I didn't.

[fol. 218]

**RONALD SKAGGS**

was called as a witness by and on behalf of the General Counsel and, after being first duly sworn, was examined and testified as follows:

[fol. 219] **TRIAL EXAMINER:** Give us your full name and address.

**THE WITNESS:** Ronald Skaggs.

**TRIAL EXAMINER:** S-K-A—

**THE WITNESS:** S-K-A-G-G-S.

**TRIAL EXAMINER:** And your address?

**THE WITNESS:** 6202 Little Seven Mile Road.

**TRIAL EXAMINER:** You work for the Food Handlers Union?

**THE WITNESS:** Yes, sir, I do.

**TRIAL EXAMINER:** Business agent?

**THE WITNESS:** Yes, sir.

**TRIAL EXAMINER:** How Long?

**THE WITNESS:** November 1 of '65.

**TRIAL EXAMINER:** And you were involved in the organizational campaign at the Ashland store of Heck's?

**THE WITNESS:** Yes, sir.

**TRIAL EXAMINER:** And you obtained signatures on some cards there did you?

**THE WITNESS:** Yes, sir.

**TRIAL EXAMINER:** All right, show him your cards.

### DIRECT EXAMINATION

**BY MR. GRAVITT:**

**Q** Look at these cards and tell me if you saw these employees sign and on those dates?

TRIAL EXAMINER: What numbers did you hand [fol. 220] him? Would you tell us, Mr. Gravitt?

MR. GRAVITT: Yes, sir. 6-1, 6-3, 6-4, 6-5, 6-6, 6-7.

TRIAL EXAMINER: Did you see all of those cards signed by persons whose names appear thereon?

THE WITNESS: Yes, sir, I did.

TRIAL EXAMINER: Were they signed in your presence?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Did you know those people personally?

THE WITNESS: I had met them; several of these were the first time.

\* \* \*

[fol. 222]

EVA H. MAYNARD

was called as a witness by and on behalf of the General Counsel and, after being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Give us your name and address.

THE WITNESS: Eva H. Maynard, 3224 Central Avenue, Ashland.

### DIRECT EXAMINATION

BY MR. GRAVITT:

Q Now, how long have you been working for Heck's? [fol. 223] A I would say about three and a half years.

Q Do you remember when Mr. Hadead came to town on May 24, do you not? A Yes, sir.

Q He talked to you and a group of employees? A That's right.

Q What did he say on that occasion regarding union cards? A Well, the very first thing when he came in, of course, he greeted us, but he did tell us that he had heard that cards were being signed. That we could sign all that we wanted to. And after that, now, he didn't, he talked just a little while.

Q Uh-huh. A And then he stayed on the same subject. But now I don't recall what he talked about.

Q Uh-huh. A But he did say that a girl in, I can't say Parkersburg because I'm not sure, in another store, come up to him and flaunted in his face that she had signed a union card and he said I fired her on the spot.

Q Fired her on the spot? A That's right.

[fol. 224]

## REDIRECT EXAMINATION

BY MR. GRAVITT:

[fol. 225] Q Just one question. You thought that he meant that he fired a girl from the Parkersburg store when she told him she signed a card, didn't you?

THE WITNESS: Yeah. And I think that was—

MR. GRAVITT: That was clear to you?

THE WITNESS: Yes, I think that was clear.

[fol. 226] MR. GRAVITT: That's the way you felt about it?

THE WITNESS: Yes.

[fol. 227]

## MARLENE CARTER

was recalled as a witness by and on behalf of the General Counsel and, after being first reminded that she was still under oath, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. GRAVITT:

Q You're the same Mr. Carter that testified here earlier? A Yes, sir.

Q All right. I show you what's been marked as GC Exhibit 6-16, 6-17, and 6-19, and ask you to look at those and tell me if you saw those people sign those cards and on the dates shown thereon? A These two, I was with those two when they were signing it.



Q You're talking GC 6-17 and 6-19? A Yes, sir.

Q You saw them signed? A Yes, sir.

Q And on the date shown on the card? A Yes, sir.

Q On what date? A 1-26-67. 1-28-67.

MR. GRAVITT: I ask that 6-17 and 6-19 be received in evidence.

MR. HOLROYD: Same objection.

TRIAL EXAMINER: Same ruling. Received.

(The above-referred two documents, heretofore marked as General Counsel's Exhibits Nos. 6-17 and 6-19 were received.)

Q (By Mr. Gravitt) Now, tell us about this 6-16. A This one, this boy here, I didn't see him.

Q But he handed you the card? A Yes, sir.

Q And was it filled out when he handed it to you? A Yes, sir.

TRIAL EXAMINER: Do you know who gave it to him? Did you give it to him?

THE WITNESS: He gave it to me, sir, to pass on.

TRIAL EXAMINER: Who gave him the blank card? Do you know?

THE WITNESS: I did.

TRIAL EXAMINER: Did you give it to him that day or the day before? When did you give it to him?

THE WITNESS: I gave it to him about three or four days before he gave it back to me.

[fol. 230]

## JUNE MENSHOUSE

was recalled as a witness by and on behalf of the General Counsel, and after being first reminded that she was still under oath, was examined and testified as follows:

### DIRECT EXAMINATION

BY MR. GRAVITT:

Mrs. Menshouse, I show you GC 6-19, and ask you whose union card that is?

TRIAL EXAMINER: 19's been received.

Q (By Mr. Gravitt) 6-8. GC 6-8. A It's Wanda Jean Carsona.

Q Did you see her sign the card? A Yes, sir.

Q And on what date? A On January the 14th, 1967.

[fol. 231]

RUBY RIFFE

was recalled as a witness by and on behalf of the General Counsel, and after being first reminded that she was still under oath, was examined and testified as follows:

### DIRECT EXAMINATION

BY MR. GRAVITT:

Q Showing you GC 6-15 can you tell me whose union card that is? A It's Mitchell Daniels.

Q Did you see him sign it? A Yes, sir.

Q On what date? A January 29th of '67.

[fol. 240] MR. HOLROYD: All right. Then paragraph 7, from the letter of Mr. Spencer to me it's clear that the demand was vague and inconclusive and, because of this matter about department heads. He didn't know whether he wanted them or he didn't want them. And therefore the demand that he made was—

TRIAL EXAMINER: He was willing to bargain with [fol. 241] you in any either unit. And you didn't want to bargain in any unit.

MR. HOLROYD: Well, he's got to pick the unit and we've got to decide on the unit that he picks. He can't just pick anyone he wants. I mean a whole bunch of them.

TRIAL EXAMINER: He can say we'll bargain with you in this one and not in that one. What's so hard about that?

MR. HOLROYD: At any rate we base our motion to dismiss on the evidence.

[fol. 245]

RAY DARNELL.

was called as a witness by and on behalf of the Respondent and, after being first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. HOLROYD:

Q Mr. Darnell, did you prepare General Counsel's Exhibit, or Respondent's Exhibit Number 1? A Yes, sir.

Q You wrote the matter up at the top of that? A Yes, sir, I did.

Q Did you write the names of the employees listed [fol. 246] down on the side? A Yes, sir, I did.

Q And did you write the X's in the columns opposite their names? A Yes, sir.

Q Did you ask the employees the list of the question that is written out on that document? A Yes, sir.

[fol. 247] TRIAL EXAMINER: And tell me just how you went about it. What did you say to them?

THE WITNESS: I had this all prepared. I had exactly what's on there on a clip board.

TRIAL EXAMINER: Respondent's Number 1?

THE WITNESS: Yes, sir. Mr. McCann and I walked thru the entire store. I'd talk to each individual separately.

TRIAL EXAMINER: Did you read this? Did you read this to all of them?

THE WITNESS: Yes, sir, I read that to all of them.

TRIAL EXAMINER: You never departed from the words that are written here?

THE WITNESS: I would say no. No, sir.

TRIAL EXAMINER: Were you reading as you spoke to them or did you have this committed to memory?

THE WITNESS: I read it and I would glance at the, my—

TRIAL EXAMINER: You would look up from the paper and glance at the employee?

THE WITNESS: Yes.

TRIAL EXAMINER: As you read it?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: You never did just memorize it and then talk to them?

THE WITNESS: No, sir. I never had it memorized.

TRIAL EXAMINER: And then what did you do when [fol. 248] they, you asked each of them do you want the union to represent you. Is that right?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: And what did you do when you got the answer to that question?

THE WITNESS: I marked an X.

TRIAL EXAMINER: Under yes or no depending on the answer?

THE WITNESS: That's right. Depending on the answer. Yes, sir.

TRIAL EXAMINER: Well, did most of them give you negative answers or positive answers?

THE WITNESS: I marked them just the way that they gave them to me.

TRIAL EXAMINER: Well, I'm asking you, what was the result? Did you count up the result?

THE WITNESS: Yes. We had more no's than we had yes's; according to our poll.

[fol. 256] CROSS EXAMINATION

[fol. 258] BY MR. GRAVITT:

Q. Now, in your testimony about Respondent's Exhibit 1, do you see that document? A. This Exhibit 1?

Q. Yes, sir. A. Yes, sir.

Q. Well, doesn't that show that you didn't check each employee like you told me earlier, on the document? Is that right? A. The ones that I talked to I checked, yes.

Q. Well, you didn't check them all. Is that your testimony now? A. My testimony is that the ones that I talked to I did check, yes.

TRIAL EXAMINER: You didn't talk to all of them?



**THE WITNESS:** I'm not positive I talked to all of them. I could have missed someone.

**Q** How many did you talk to? **A** All that were marked on here with X's.

**Q** Why did you leave some out? **A** There could have been reasons; they were off the day that I made the poll.

**Q** If all of the employees on there that you've got listed had told you that they wanted a union you still wouldn't have recognized this Food Handlers Union, would you?

**THE WITNESS:** I would have referred it to Mr. Holroyd. The decision would have been with him.

**TRIAL EXAMINER:** \* \* \* You might want to ask Mr. Holroyd that question. It would be more pertinent.

**Q** And you still won't recognize this union today will you. **A** I think I previously stated that I would turn that over to Mr. Holroyd.

[fol. 260] **Q** Yes, sir. You wouldn't make any decision on it? **A** That's the reason we have a counsel.

**Q** You wouldn't tell them you recognized them? **A** That's the reason we have a counsel.

**Q** Is that right? **A** That's reason we have a counsel.

**Q** Yes, sir. But the question was you would not tell the Food Handlers that you would recognize them today would you? **A** I would not—

**TRIAL EXAMINER:** He would not make the decision he says.

**MR. GRAVITT:** Yes, sir.

**TRIAL EXAMINER:** Now, if this company is passing the decision along to his lawyer, they are thereby making the lawyer a part of management and I think the lawyer is subject to examination on that point if you want to examine him. There's no use pressing this any further.

**Q** Well, now when you conducted the poll whether they represented the employees or not had nothing to do with you recognizing the union did it? **A** Would you mind asking that again?

**MR. GRAVITT:** Would you read it to him please?

[fol. 261] **TRIAL EXAMINER:** When you conducted

this poll was it for the purpose of determining whether you recognized the union? .

**THE WITNESS:** It was as per instructions of Mr. Holroyd.

**TRIAL EXAMINER:** There's no use pressing this man further. If you want the answer you'll have to ask Mr. Holroyd. I'll have to sustain an objection to any further questions on that. This is a rather unique situation where the company has made the lawyer a part of management.

**MR. GRAVITT:** Well, I take the position—

**TRIAL EXAMINER:** And delegate to him management decisions.

**MR. GRAVITT:** Well, Your Honor, even if they take his advice and it's erroneous—

**TRIAL EXAMINER:** Well, he's just performing administrative actions under his lawyer's instructions. They advocated in favor of their lawyer. They forget to credit this witness.

**Q** And your lawyer told you not to recognize them. Is that right? **A** He's the one I think that answered the letter.

**Q** Well, he told you not to recognize the Food Handlers did he not? **A** In the letter he told Mr. Sherwood Spencer that they didn't feel that the—

**TRIAL EXAMINER:** Don't answer the question. The letter speaks for itself.

**Q** (By Mr. Gravitt) Can you tell me, as a matter of fact, on October the 8th, just from your own knowledge, sir, how many of the employees had signed cards for this Local 847? **A** No, sir, I can't tell you.

**Q** You don't know? **A** No, sir, I do not know.

**Q** And you don't know today, do you? **A** From the looks of the evidence that's been produced here there's quite a few, yes.

**Q** And you didn't know from, during the time, October the 8th to the 13th, 1965, did you? **A** I didn't know, no, sir. I haven't seen the cards. I hadn't asked to see the cards.

**MR. GRAVITT:** No more questions.

**TRIAL EXAMINER:** All right.

MR. GUNNOE: Mr. Darnell, now out of all the cards that have been presented we are again asking you for recognition.

MR. HOLROYD: Object to this question. It's outside the scope of direct examination. It's not a question at any rate.

MR. GUNNOE: He didn't give me time to finish.

TRIAL EXAMINER: Finish the question, but don't answer until I rule.

MR. GUNNOE: And if you don't have the authority to make the decision on whether to recognize the union or [fol. 263] not who are we to contact to, that would have the authority to make this decision?

TRIAL EXAMINER: All right. Do you object to that question?

MR. HOLROYD: Object to that question. It's outside the scope of the direct examination.

TRIAL EXAMINER: It's already been answered since he's delegated everything to his lawyer.

MR. GUNNOE: Mr. Holroyd we'd like to ask you—

TRIAL EXAMINER: Do you want to put him on the witness stand? Do you want to call him as a witness?

MR. GUNNOE: Yes, sir.

TRIAL EXAMINER: You may do so at a later point.

MR. HOLROYD: This is all you've got of him?

MR. GRAVITT: No more questions.

MR. HOLROYD: All right. We rest our case.

TRIAL EXAMINER: Well, if you rest your case and you don't call Mr. Haddad to explain what he's told the employees the Board may well draw an adverse interest, Mr. Holroyd, for one thing. It's a rather crucial point. And the whole case may turn on whether he made that statement or not.

You still wish to rest your case?

MR. HOLROYD: Yes, sir. We rested.

TRIAL EXAMINER: You're willing to risk that adverse influence?

[fol. 264] MR. HOLROYD: I'm familiar with the—

TRIAL EXAMINER: All right. That's enough. That doesn't leave me much choice in making my decision on that point.

EXHIBITS IN CASE NO. 9-CA-3728  
GENERAL COUNSEL'S EXHIBIT NO. 2  
FOOD STORE EMPLOYEES UNION  
Local No. 347  
\* \* \*

October 11, 1965

Mr. Frederick Holroyd  
Attorney at Law  
521 Central Avenue  
Charleston, West Virginia

Dear Mr. Holroyd:

This letter will serve to confirm my conversation with you on Friday, October 8, 1965, wherein I told you we represented a majority of the employees of Heck's Ashland store and asked for recognition and bargaining. You asked if I included the department heads and I told you we represented the majority with or without the department heads and that we would have that majority regardless of the Board's disposition of the department heads. I specifically explained that the two office girls, the store manager and the assistant manager as well as the watchman would not be included in the unit.

Our majority is firm either with or without department heads and knowing Heck's as I do I told you it would probably be a case to be decided by the Board. If the Board includes them we will have a majority and if the Board excludes them we will have a majority.

I offered to turn the cards over to you and they are still available. We will turn them over to you or Heck's for examination.

Very truly yours,

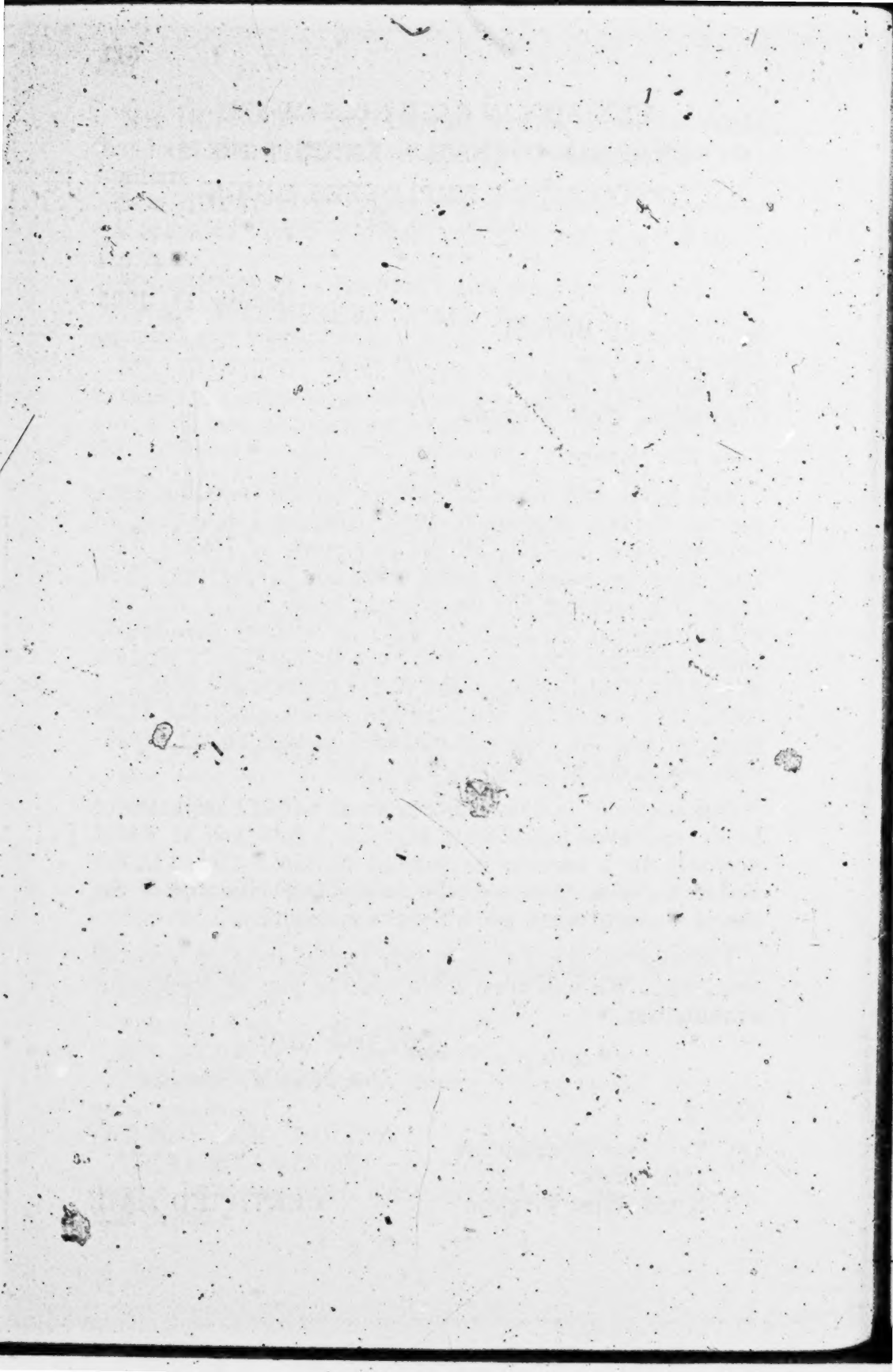
/s/ Sherwood M. Spencer

SMS:d

cc: Tri-State Distributors  
19th Street  
Nitro, West Virginia

CERTIFIED MAIL





(Do not write in this space)

# NATIONAL LABOR RELATIONS BOARD APPLICATION

Name 9CA 3356 G C 42(4) **BLANK**

Lodge No. \_\_\_\_\_ Identified ☒  
 Obligated Disposition Received ☐  
 Rejected ☐



International Brotherhood of Teamsters,  
 Chauffeurs, Warehousemen and Helpers of  
 America, Local Union 175  
 CHARLESTON - WEST VIRGINIA

In the matter of Heck's  
 JUN 28 1965  
 Date Oct 6, 1964  
 Date Oct 3, 1964

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, I hereby make application for admission to membership. I hereby authorize you, or your agents or representatives to act for me as collective bargaining agent on all matters pertaining to rates of pay, hours, or any other condition of employment.

Signature James C. Haines Sec. Sec. No. \_\_\_\_\_  
 Address 2104 Hancock Blvd. Date of Birth 12-26-37 Tel. No. 343-7268  
 Employed at Heck's Tire & Auto Dist. Job Classification Labor  
 Chauffeurs License No. \_\_\_\_\_ Beneficiary James Haines  
 Relationship of Beneficiary wife

## QUESTIONS

1. Have you ever been a member of any Local Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers? Answer YES or NO Yes
2. Have you ever applied for admission and been rejected by any Local Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers. Answer YES or NO No
3. Are you able to command the average wages of the craft in this locality? Answer YES or NO Yes
4. Are you willing to take an obligation that will bind you to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, and that will in no way conflict with your religious belief, or your duties as a citizen? Answer Yes or NO Yes

## OBLIGATION

I, of my own free will and accord, in the presence of these witnesses, and on my own sacred honor, I do now covenant to keep the affairs of this Union strictly private unless authorized to reveal the same.  
 I will abide by its laws, both general and local, and will use all honorable means to procure employment for brother members.  
 I will make every possible effort to attend the meeting, and will pay all dues and assessments levied in accordance with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers' laws.  
 I further agree, that should it be hereafter discovered that I have made any misstatements as to my qualifications for membership, that I be debarred from all benefits provided by this Union. I will be obedient to authority, orderly in its meetings, respectful in words and actions, charitable in judgment of my brother members, and will never from self-motives wrong a brother, or see him wronged if in my power to prevent it. I will render full allegiance to this Union and never consent to subordinate its interests to those of any other organization of which I am now or may hereafter become a member.  
 To all this I pledge my sacred word and honor—to observe and keep the same—as long as I remain a member of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers.

SIGNED James C. Haines  
 WITNESS James C. Haines

DATE \_\_\_\_\_

N.L.R.B.  
 REGION-CINCINNATI  
 OCT 12 10:08 AM



## GENERAL COUNSEL'S EXHIBIT NO. 3

GARDNER, GANDAL AND HOLROYD  
Law Offices

October 13, 1965

Honorable Sherwood M. Spencer  
Secretary-Treasurer  
Food Handlers Local Union 347  
Nelson Building  
Charleston, West Virginia

RE: HECK'S IN ASHLAND

Dear Sherwood:

This is to confirm your telephone call to me Friday, October 8, 1965, wherein you asserted that you represented a majority of the employees in Heck's Ashland, Kentucky store. Pursuant to my questioning you stated that such majority existed with or without the department heads and you were making a demand to include the department heads or to exclude them depending upon what the Board decided in this case. This answer resulted in a very confused demand and we must therefore conclude that you did not demand recognition in an appropriate unit.

Irrespective of this and in addition, we have caused a poll of all employees in that store to be conducted, the resulting answers produced an overwhelming statement that you did not represent the employees.

Accordingly recognition is declined until such time as you have been certified as the majority representative of the employees involved by the N.L.R.B.

Very truly yours,

GARDNER AND HOLROYD  
/s/ Frederick F. Holroyd

FFH/ab  
cc. Ray Darnell



## GENERAL COUNSEL'S EXHIBIT NO. 4

October 25, 1965

Frederick Holroyd  
Attorney at Law  
521 Central Avenue  
Charleston, West Virginia

Re: Your letter of October 13, 1965—  
Heck's Ashland, Ky.

Dear Mr. Holroyd:

It is understandable that you attempted to misconstrue my phone conversation with you of October 8, 1965. You are attempting in your letter to me to deny an appropriate unit under any and all circumstances and this should be clear to the Board.

Inasmuch as a hearing was held concerning the Ashland store before the National Labor Relations Board and either through lack of information which the hearing officer had available to him in Parkersburg or because the hearing officer firmly felt that the department heads in Ashland were supervisors, we have two hearing officers in two different cases involving Heck's in which they differed in the status of certain department heads.

Therefore, so there can be no misunderstanding I am specifically making a request for bargaining and recognition for each of the units. I am requesting recognition and bargaining for all the employees at your Ashland store including non-supervisory department heads but excluding the store manager, the assistant manager, and two office employees and the night guard (watchman). I am specifically requesting recognition and bargaining for all the employees excluding the department heads, the store manager, the assistant store manager, office clerical employees and your guard or watchman.

Again, I am certain Heck's will follow the procedure as in the past and will deny as you did in your letter of the 13th, recognition and bargaining.

I am again offering to deliver to you or to any other person a majority of the signed authorization cards authorizing this Union to represent the employees of Heck's at the Ashland store in either of the above units or the unit the Board will finally determine to be appropriate. These cards are available at any time for your inspection for comparison with the payroll.

I note you claim you caused a poll of the employees to be taken in the store and that you state "the resulting answers produced an overwhelming statement that you did not represent the employees."

In the face of the letters which have previously been sent to the employees of that and other stores it should be apparent to you the members in that store would be fearful of admitting they belonged to a Union inasmuch as Heck's has a record of discharging employees because of their sympathies for and on behalf of the Union and the Board has so held.

Very truly yours,

/s/ Sherwood M. Spencer

SMS:d

cc. Mr. Fred Haddad

---

GENERAL COUNSEL'S EXHIBIT NO. 4A

## GENERAL COUNSEL'S EXHIBIT NO. 4B

## APPLICATION

FOOD STORE EMPLOYEES UNION, LOCAL #347

P. O. Box 2751

Charleston, W. Va.

The undersigned hereby authorizes this Union to represent his or her interest in collective bargaining concerning wages, hours, and working conditions.

Heck's

Company Name

Ashland, Ky.

Company's Address

Oct. 2, 1965

Date

/s/ John Hale

Witness

Bill Morris

Your Name

2420 Roosevelt St.

Your Street Address

Ashland, Ky.

City &amp; State

324-8082

Your Phone Number

## RESPONDENT'S EXHIBIT NO. 1

You are probably aware that the Food Handlers Union are trying to organize the store. They have made a demand of the Co. stating that they have a majority of our employees who desire them (the union) to represent them. Do you want the union to represent you? This will in no way have any bearing on your job. You do not have to answer this.

	Name	Yes	No	Neutral
	John Hale	X		
	Larry Kinney		X	
	Ruby McGuire	X		
	Audrey Smith		X	
	Asenath Toney		X	
	Belua Galliher		X	
Dept. Head	Emmett Moore		X	
	Dave Back		X	
	Gary Quillen	X		
	Susie Murphy		X	
	Marlene Carter	X		
	Eva Maynard		X	
	Ruby Riffe	X		
	June Menshouse	X		
	Jeanelle Roberts		X	
	Judy Jones		X	
	Fanny Lou Conley			
	Karen Layne		X	
	Roger Davis		X	
	Dave Kersey		X	
	Ruth Harris		X	
	Richard Brown		X	
	Jonell Gates	X		
	Jerry Layne—Signed wants card back		X	
	Gareyl Fluty		X	
	Dorise Clare	X		



	Name	Yes	No	Neutral
Dept. Head	Paul France	X		
	Bill Wheeler—Signed wants card back		X	
	Judy Wells		X	
Dept. Head	Bob Cartwright		X	
	Kenneth Bainey		X	
	Terry Cristwell—Signed wants card back	X		
	Josie Whitt	X		
	Pat Riley		X	
	Fern Saunders		X	
	Alice Hobson		X	
	Linda Fields	X		
Bag Boy	Bill Morris	X		
Dept. Head	Joe Imas			
Officer Cashier	Betty Cahall—		X	
Dept. Head	Gail Clarke			
Bag Boy	Gregg Pennington			
Dept. Head	Howard Colm	X		
Bag Boy	Clifton Salyers			

**RESPONDENT'S EXHIBIT NO. 2**  
**RETAIL CLERKS UNION LOCAL 1059**

**October 1, 1965**

**Mr. Fred Haddad, President  
Tri-State Distributors Inc.  
19th Street  
Nitro, West Virginia**

**Dear Mr. Haddad:**

**This is to notify you that Retail Clerks Union Local 1059 has interest in your Hecks Inc. store located 3503 Winchester Avenue, Ashland, Kentucky, therefore, we hereby inform you that any agreements with any other Labor Organization would be in contradiction to the above stated interest and we will take all necessary legal action to protect such interest.**

**Please contact the undersigned in the event you have any questions concerning this matter.**

**Sincerely,**

**/s/ William E. Harvey**

**William E. Harvey, President  
Retail Clerks Union Local 1059  
187 South High Street  
Columbus, Ohio 43215**

**CA 4-9237**

**WEH:br**

**EXHIBITS IN CASES Nos. 9-CA-3356 & 9-CA-3477**

**GENERAL COUNSEL'S EXHIBIT NO. 1-(a)  
UNITED STATES OF AMERICA**

**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD**

**Cases Nos. 9-CA-3356, 9-CA-3477**

**HECK'S, INC.**

**and**

**CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL UNION  
No. 175, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMER-  
ICA**

**ORDER REOPENING RECORD AND REMANDING  
PROCEEDING TO REGIONAL DIRECTOR  
FOR FURTHER HEARING**

On November 30, 1965, Trial Examiner, Thomas F. Maher, issued his Decision in the above-entitled proceeding. Thereafter, the General Counsel and the Respondent filed exceptions to the Decision, and the General Counsel filed a brief in support of his exceptions.

In his Decision, the Trial Examiner dismissed the 8(a) (5) allegation of the complaint without determining the appropriateness of the unit, the Union's majority representation therein, or the lawfulness of the Respondent's refusal to recognize the Union as such representative upon the ground that "General Counsel has failed to meet the burden of establishing what precisely was the appropriate unit in which the Union had its majority." We do not agree with this conclusion of the Trial Examiner. On the contrary, we find on the basis of the entire record that the General Counsel was plainly contending that the appropriate unit consisted of all truck drivers and warehouse employees at the Nitro, St. Albans and Charleston warehouses. As the present record is inadequate to enable the Board to determine the unit and majority questions, we

shall remand the cases to the Trial Examiner for the purpose of receiving additional evidence and making the determination necessary to decide the complaint allegation that Respondent had unlawfully refused to bargain with the Union. Accordingly,

IT IS HEREBY ORDERED that the record in this proceeding be, and it hereby is, reopened, and that a further hearing be held before Trial Examiner Maher for the purpose of adducing additional evidence concerning

(1) Whether the unit sought by the Union herein was in fact "appropriate" for the purposes of collective bargaining.

(2) Whether the Union represented a majority of employees in said unit.

(3) Whether Respondent's refusal to recognize the Union as bargaining representative of employees in said unit was lawful.

IT IS FURTHER ORDERED that this proceeding be, and it hereby is, remanded to the Regional Director for Region 9 for the purpose of arranging such hearing, and that the said Regional Director be, and he hereby is, authorized to issue notice thereof.

IT IS FURTHER ORDERED that, upon conclusion of the hearing, the Trial Examiner shall prepare and serve upon the parties a Supplemental Decision containing findings of fact, conclusions of law, and recommendations based upon the evidence contained in the entire record, and that following service of such Trial Examiner's Supplemental Decision upon the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

Dated, Washington; D. C., March 23, 1966.

By direction of the Board:

/s/ George A. Leet  
Associate Executive Secretary



**GENERAL COUNSEL'S EXHIBIT NO. 4**  
**CHAUFFEURS, TEAMSTERS AND HELPERS**  
**Local Union No. 175**

October 9, 1964

Mr. Fred Haddad  
Tri-State Distributors, Inc.  
Viscose Road  
Nitro, West Virginia

Dear Sir:

This is to confirm our conversation in your office on this date. This local union represents a majority of your employees and respectfully requests that you negotiate a contract with us for their future employment. We are today filing with the National Labor Relations Board for Certification.

Please let me know when it will be possible for me to meet with representatives of your company to discuss the matter.

Very truly yours,

**TEAMSTERS LOCAL UNION**  
**NO. 175**

/s/ R. D. Jackson

R. D. Jackson  
Business Representative

RDJ/jh

**CERTIFIED MAIL**

TXD-171-67  
Ashland, Ky.

UNITED STATES OF AMERICA  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
DIVISION OF TRIAL EXAMINERS,  
WASHINGTON, D. C.

Case No. 9-CA-3728

HECK'S, INC.<sup>1</sup>

and

FOOD STORE EMPLOYEES UNION, LOCAL #347, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO

*Cassius B. Gravitt, Jr., Esq., and James K. Lawrence, Esq., for the General Counsel.*

*Frederick Holroyd, Esq., Charleston, W. Va., for Respondent.*

*Messrs. Sherwood M. Spencer and Woodrow R. Gunnoe, Charleston, W. Va., for the Charging Party.*

TRIAL EXAMINER'S DECISION

SIDNEY SHERMAN, Trial Examiner: The instant charge was served upon Respondent on October 22, 1965,<sup>2</sup> the complaint issued on December 16, and the case was heard on February 1, 1967. The issues litigated related to allegations of unlawful interrogation, threats of reprisal, creating the impression of surveillance, and unlawful refusal to bargain. After the hearing briefs were filed by Respondent and the General Counsel. On March 16, 1967, an order was issued proposing certain corrections in the record and the incorporation therein of certain exhibits, and disposing of certain other matters. No ob-

<sup>1</sup> Respondent's name appears as amended at the hearing.

<sup>2</sup> All events herein occurred in 1965, unless otherwise stated.

jection has been received to this order, and it is hereby affirmed.\*

Upon the entire record, and my observation of the witnesses, I adopt the following findings of fact and conclusions:

### I. The Business of Respondent

Heck's, Inc., herein called Respondent, is a West Virginia corporation, engaged in the operation of retail stores at various locations in the States of West Virginia and Kentucky. The Respondent annually has gross sales of more than \$500,000, and annually purchases from out-of-State points goods valued in excess of \$50,000. Respondent is engaged in commerce under the Act.

### II. The Labor Organization Involved

Food Store Employees Union, Local #347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, hereinafter called the Union, is a labor organization under the Act.

### III. The Unfair Labor Practices

#### A. Issues

The pleadings, as amended at the hearing, raise the following issues:

1. Whether Respondent's president, Haddad, told employees on or about May 24, that he had discharged an employee when she admitted signing a union card?
2. Whether the interrogation of employees on October 8, by Respondent's operations manager, Darnell, violated Section 8(a)(1) of the Act or was privileged under the Board's *Blue Flash* doctrine?

---

\* In addition, it is now ordered (1) that Respondent's motions to strike appearing at pp. 24 and 28 of the transcript, as to which ruling was reserved at the hearing, are hereby granted, and (2) that Respondent's objection to evidence, which objection appears at page 100 of the transcript, and as to which ruling was reserved at the hearing, is hereby granted and the evidence objected to is hereby struck.

3. Whether Respondent's assistant store manager, Mitchell, unlawfully created the impression of surveillance?

4. Whether Mitchell told an employee that another supervisor had been discharged because of the Union, and invited the employee to resign?

5. Whether Respondent's admitted refusal to recognize the Union violated Section 8(a)(5) and (1) of the Act?

### *B. Sequence of Events*

Respondent operates a chain of discount stores in Kentucky and West Virginia. The instant case involves only its Ashland, Kentucky store.

The instant organizing campaign began early in 1965, and by October 8, the Union had obtained a number of signed cards from persons working in the Ashland store. On May 24, during the foregoing campaign, Respondent's president Haddad, addressed the assembled store employees, and, after telling them, in effect, that the signing of a union card would not immunize them from disciplinary action, cited an incident involving the discharge of an employee in another store who had volunteered to him the information that she had signed a union card. There was some conflict in the testimony at the hearing, which will be considered below, as to the precise reason given by Haddad for the discharge of that employee.

On October 8, Union Agent Spencer called Respondent's counsel, Holroyd, stated that he had obtained signed cards from a majority of Respondent's Ashland employees, and requested recognition. Holroyd suggested that Spencer write him a letter to that effect. On October 8, Respondent's operating manager, Darnell, asked virtually all the employees in the Ashland store, whether he (or she) wanted to be represented by the Union. In a letter of October 11, to Holroyd Spencer repeated the substance of the foregoing oral demand, offering to show Respondent the Union's cards. On October 13, Holroyd replied by letter, declining to recognize the Union because of an alleged ambiguity in the Union's definition of the unit, and because a poll taken by Respondent demonstrated that the majority of the Ashland employees did not wish to be



represented by the Union. On October 25, Spencer again wrote to Holroyd, renewing the Union's demand, but received no reply.

There was uncontradicted testimony by employee Clare that early in October, Assistant Store Manager Mitchell, an admitted supervisor,<sup>4</sup> told her that Respondent knew which employees had signed, and which had not signed, Union cards, and that the Union had attained majority status when Clare signed a Union card (on October 6).

### C. Discussion

#### 1. Union animus

Respondent's union animus is amply attested by the Board's findings in 150 NLRB 1565 (Ashland store), 156 NLRB No. 73 (Parkersburg store), 158 NLRB No. 21 (Parkersburg store), 159 NLRB No. 104 (Huntington store), and 159 NLRB No. 127 (Huntington store). Perusal of these cases shows that at the foregoing stores Respondent reacted to a union organizational campaign by mounting a counteroffensive of interrogation and threats, did not hesitate to resort to discriminatory discharges, and that it consistently rejected requests for recognition. Thus, in 150 NLRB 1565, involving a campaign in 1964 by a different union (Retail Clerks) to organize the instant store, it was found that Respondent, through its president, Haddad, and operations manager, Darnell, engaged in extensive interrogation, that a supervisor threatened employees with discharge for union activity, and that an active union adherent was, in fact, discriminatorily discharged.

#### 2. The 8(a)(1) issues

##### a. The Haddad speech

Riffe testified that on May 24, President Haddad told the assembled employees at the Ashland store that they could sign all the union cards they wished, but they still

<sup>4</sup> The denial in the Respondent's answer of Mitchell's supervisory status was withdrawn at the hearing.

had to do their work, and that he then mentioned the case of a girl in Respondent's Parkersburg store who, after volunteering to him the information that she had signed a union card, had been "fired on the spot." Menshouse testified to the same effect, and Maynard corroborated this version with only the minor embellishment that Haddad asserted that the Parkersburg employee had "flaunted" the fact that she had signed a union card. While agreeing otherwise with Riffe, Clare testified that Haddad interpolated the explanation that the girl in Parkersburg had been discharged because she took the position, in effect, that, having signed a union card, she was free to neglect her work, and Carter testified to substantially the same effect.

All the foregoing employee witnesses were called by the General Counsel, and were apparently sincere. Their testimony may be reconciled on the assumption that Haddad, purposely or otherwise, cast his remarks in such a form that they were susceptible of different interpretations. Thus, if he stated, as Maynard testified, that the employees could sign all the Union cards they wanted, but still had to do their work, and, that he had discharged a Parkersburg employee for flaunting the fact that she had signed a union card, it was understandable that some of the employees, like Clare, would interpret the last remark, taken in context, as implying that the case of the Parkersburg employee was given as an illustration of Haddad's thesis that the signing of a union card did not relieve the employees of their obligation to do their job. However, if, as Menshouse, Riffe and Maynard testified, Haddad did not make it clear that the discharge of the Parkersburg employee was for any reason other than her avowal of union adherence, it was expectable that some, at least, of the employees would construe his remarks as implying, if not that all Union adherents would be summarily discharged, that Respondent, at the very least, would be quick to discharge Union adherents who gave it any offense. Moreover, in resolving the foregoing conflicting versions of Haddad's remarks, I deem it particularly significant, that Respondent, without offering any explanation at the time, failed to call Haddad to testify, not-

withstanding that it was pointed out to Respondent's counsel at the hearing that such failure would invite the inference that Haddad's testimony would not aid Respondent.<sup>5</sup>

In view of this, I am constrained to find that, as indicated by the testimony of Menshouse, Riffe and Maynard, Haddad's remarks were couched in such a way as to lead his listeners to believe that adherence to the Union would subject them to reprisals, and that Respondent thereby violated Section 8(a) (1) of the Act.

*b. Darnell's interrogation*

Admittedly, Darnell on October 8, systematically interrogated all the employees in the Ashland store about their desire for Union representation. According to Darnell, he approached the employees in the store and read the following from a sheet of paper which he held in his hands:

You are probably aware that the Food Handlers Union are (sic) trying to organize the store. They have made a demand of the Co. stating that they have a majority of our employees who desire them (the Union) to represent them. Do you want the Union to represent you? This will in no way have any bearing on your job. You do not have to answer this.

The sheet also listed the names of the employees and opposite this list were three ruled columns captioned, respectively "Yes," "No," and "Neutral." According to Darnell he indicated in one or the other of these columns the nature of each employee's reply to his question re-

<sup>5</sup>In his brief Respondent's counsel asserts that he did not defend the allegation relating to Haddad's speech because of his understanding that it had been struck. However, at the close of the General Counsel's case I stated on the record that I was reserving ruling on Respondent's motion to strike that allegation, and in my order of March 16, 1967, that motion was finally overruled. On the same date I advised Respondent's counsel by letter that, if he deemed himself prejudiced by this ruling, I would entertain a motion to reopen the hearing to receive further evidence on the matter. No such motion was filed.

garding their desire for union representation.<sup>6</sup> He testified that the majority of the employees interrogated repudiated the Union, and the tally on the sheet, eliminating the answers of those found below to be supervisors, shows that only 12 favored the Union while 23 opposed it. The answers of three employees were not recorded.<sup>7</sup> While three of the employees (Clare, Smith, and Menshouse) testified that Darnell's remarks to them corresponded to the foregoing quoted matter, Riffe testified only that Darnell asked her if she wanted to be represented by the Union, and Carter and Gates were specific that, in interrogating them, Darnell gave no assurance that their answers would not affect their jobs.

As I was favorably impressed by the demeanor of the latter three witnesses, and by the circumstantiality of their version of the interrogation incident, I credit them as against Darnell, and find that he offered them no assurance against reprisals.

Respondent contends that the foregoing interrogation was permissible under the Board's *Blue Flash* rule,<sup>8</sup> which sanctions interrogation of employees about their desire for union representation, provided, *inter alia*, (1) that the purpose is to verify a union's contemporaneous claim to represent a majority of the employees, (2) that such interrogation is accompanied by an assurance against any reprisals for union activity, and (3) that such interrogation does not occur in a context of employer hostility to union organization.

I am satisfied that none of the foregoing conditions was met here. As to (1), it is clear from Clare's unde-

<sup>6</sup> The foregoing document was offered in evidence at the hearing as Respondent's Exhibit 1, but was received only for the purpose of showing what Darnell purportedly read to the employees. However, upon reconsideration, the document was by my order of March 16, 1967, received in evidence without any limitation, since the contents of the entire document were in effect, adopted by Darnell in his testimony.

<sup>7</sup> Darnell testified that he may have missed a few employees in making the round of the store.

<sup>8</sup> *Blue Flash Express, Inc.*, 109 NLRB 591; *Johnnie's Poultry Co.*, 146 NLRB 770.



nied testimony, related in more detail below, that Respondent already knew on October 6, which employees had signed cards and that when Clare signed a card on that date the Union had achieved majority status, and there is no evidence that Respondent believed that such majority had been obtained by improper means.<sup>9</sup> Accordingly, Darnell's polling of the employees was not necessary to verify the Union's claim, and it seems fair to infer that Respondent's only reason for taking the poll was the expectation that some of the Union adherents would be reluctant to admit their true sentiments to Darnell, even if they were given assurance against reprisals, and that the result of such a poll would, therefore (as proved to be the case here), be more favorable to Respondent than a count of the cards known by Respondent to have been actually signed. I do not believe that to permit such a "recount" by Respondent would conform to the letter or spirit of *Blue Flash*.<sup>10</sup>

As to the requirement of *Blue Flash* that the interrogation be accompanied by an assurance against reprisals, it has already been found that in the case of at least three employees Darnell neglected to convey that assurance.

As to the requirement of absence of union animus, it must be remembered that Darnell's interrogation occurred

<sup>9</sup> In any event, since the record, including Darnell's own testimony, is devoid of any evidence that he asked any of the employees on October 8, about the methods used by solicitors for the Union to induce the employees to sign the cards, it is clear that Respondent had no concern on this point.

<sup>10</sup> Prior to *Blue Flash*, the Board had long held that systematic interrogation of employees about their union sentiments was unlawful as an invasion of their right to privacy and freedom from coercion. In *Blue Flash*, the Board balanced the mischief of such interrogation against the interest of the employees in verifying the accuracy of a union's claim to represent a majority of his employees, and struck a balance in favor of the employer. See *Johnnie's Poultry Co.*, *supra*. However, where as here, there is ample basis for finding that the employer is already aware from other sources of the facts as to the Union's status, no legitimate purpose would be served by permitting him even the limited invasion of his employees' rights accorded by *Blue Flash*.

against the background of President Haddad's speech of May 24, in which, as found above, he cited the case of an employee whom he had discharged on the spot, when she announced that she had signed a union card. Although this speech had been delivered more than 4 months before the polling of the employees, such a dramatic threat to their job security by the top representative of management could not have failed to make a lasting impression on the assembled employees.

Moreover, it is relevant here to consider Respondent's union animus, as demonstrated by the Board's findings in the various cases cited above, particularly the Board's findings that in March 1964, at the instant store, both Haddad and Darnell engaged in unlawful interrogation, Respondent threatened discharge of all the union adherents, and did discriminatorily discharge, Menshouse, a prominent union protagonist;<sup>11</sup> and, so far as appears from the record, such unfair labor practices were still unremedied on October 8.<sup>12</sup> It is difficult to see how, under such circumstances, Darnell's poll could be deemed to meet the requirement of *Blue Flash* that such interrogation must not occur in a context of hostility to union organization.

It may be noted, finally, that, in finding interrogation of an employee to be coercive, the Board and the courts have frequently cited the fact that the employee falsely disclaimed any interest in union representation.<sup>13</sup> Here, according to Darnell's own testimony the vast majority of the 38 Ashland employees disclaimed any desire for Union representation even though, as found below, 21 of them had signed Union cards, and there is no evidence

<sup>11</sup> 150 NLRB 1565, enf'd. 63 LRRM 2527 (C.A. 6, Nov. 1966).

<sup>12</sup> While Menshouse had been rehired by October 8, there was no evidence as to the extent to which Respondent had otherwise complied with the Board's order by that date.

<sup>13</sup> See e.g., 159 NLRB No. 104, at page 7 of the Trial Examiner's Decision (involving Respondent's Huntington Store), which was affirmed on this point by the Board, where the variance between the result of an employee poll and the card count was cited as a reason for finding the poll coercive.

that any of them had prior to October 8, sought to revoke their cards.

For all the foregoing reasons, it is found that Darnell's interrogation violated Section 8(a) (1) of the Act.

*c. The Mitchell-Clare incidents*

Clare signed a Union card on October 6. She testified that early in October, she had discussions about the Union with Assistant Store Manager Mitchell, who told her that Respondent knew what employees had and had not signed Union cards, and that the Union had gotten "over the hump" and achieved majority status, when she signed a Union card. Mitchell did not testify. I credit Clare. A statement reflecting such precise knowledge of the number of Union adherents<sup>14</sup> could not fail to create an impression of close surveillance by management of Union activities, through employee informers or otherwise.<sup>15</sup> It is accordingly found that, by creating such an impression, Respondent violated Section 8(a) (1) of the Act.

<sup>14</sup> Moreover, as found below, the Union did in fact get "over the hump" on October 6, when it obtained its 20th (and 21st) card. (Both Clare and Brown signed cards on that date.)

<sup>15</sup> While it is not clear from Clare's testimony whether this conversation took place before or shortly after the October 8 poll, it is evident that Mitchell was not referring to that poll as the source of Respondent's information regarding the Union sentiments of the employees. For one thing, that poll elicited repudiations of the Union from the vast majority of the employees, and it is not apparent, in any event, how Respondent could have determined from that poll the precise date on which the Union obtained the decisive card.

Respondent cites certain testimony by Clare to the effect that she and Mitchell were on friendly terms, that she "probably" initiated discussions of the Union with him, that she "might have" told him before the foregoing incident that she knew that most of the employees had signed Union cards; and that, on the occasion in question, she agreed with Mitchell's observation on this point. However, there is no evidence that Clare disclosed to Mitchell the identity of the Union adherents or that she herself had signed a card; and the fact that Mitchell and Clare were on friendly terms or that she initiated the discussions of the Union could not detract from the coercive effect of Mitchell's imputation to higher management of exact knowledge of the identity of the Union adherents.

Clare testified further that some time after Darnell's visit to the store on October 8, Mitchell referred to a rumor then circulating among the employees that Store Manager McCann had been "discharged" <sup>16</sup> because of "the union and the employees," and that, in this connection, on a particular Saturday evening Mitchell told the witness that the employees and the Union had "shafted" McCann, and that the employees were not going to "shaft" Mitchell. As Mitchell did not testify, I credit Clare. It is apparent from the foregoing that Mitchell attributed the actual or supposed downfall of McCann to the extent of the employees' Union activity. Such a statement to an employee, implying, as it did, that management could not hesitate to discharge a supervisor for tolerating union activity, could not fail to impress upon such employee that those engaging in such activity might share the supervisor's fate. Accordingly, I find that Respondent thereby violated Section 8(a)(1) of the Act.<sup>17</sup>

The General Counsel alleged a further violation based on Clare's testimony concerning an invitation to her by Mitchell to resign her job. However, the most that can be made of Clare's rather confused testimony on this point is that, while this remark was made by Mitchell on the same evening that he referred to the "shafting" of McCann, the occasion for the remark was not Clare's Union activity or sentiments but a disagreement over an entirely different matter, unrelated to the Union, and that the very next day Mitchell apologized to her therefor. Accordingly, I find no violation here.

<sup>16</sup> As McCann apparently continued as store manager at Ashland until November 1966, the foregoing discussion either must have occurred after that date, or must have been based on misinformation as to McCann's status.

<sup>17</sup> Had McCann in fact been discharged because of a permissive attitude toward the Union, such discharge would clearly have been unlawful. *Talladega Cotton Factory, Inc.*, 106 NLRB 295, enf. 213 F.2d 208 (C.A. 5); *Jackson Tile Manufacturing Co.*, 122 NLRB 648. The rationale of these cases is that such a discharge tends to instill in employees the fear that they will suffer the same fate if they persist in their union activities. Such fear is nonetheless real, where, as here, the employees are told that their union activities caused the supervisor's discharge, whether or not that was actually the case.



### 3. The 8(a)(5) issue

#### a. *The appropriate unit*

It was agreed at the hearing, and I find, that the following unit is appropriate for purposes of collective bargaining:

All employees at Respondent's store in Ashland, Kentucky, excluding guards, professional employees, and supervisors as defined in the Act.<sup>18</sup>

It was also agreed at the hearing, in conformity with the Board's finding in the prior case involving the instant store,<sup>19</sup> that the six department heads at Ashland were supervisors, and that the night watchman at that store was a guard. They will accordingly be excluded.

#### b. *The Union's majority status*

At the hearing Respondent presented a document containing a list of 45 names, which were identified by McCann, the former manager of the Ashland store, as the names of all employees and department heads on the payroll for that store during the week beginning October 8.<sup>20</sup> Of the foregoing persons, it was stipulated at the hearing that six, who were listed as department heads, were su-

<sup>18</sup> The original complaint provided for the exclusion of office clericals from the unit. The record shows that on October 8, Respondent had only one office clerical employee—Ruth Conley. (Cahal, who also worked in the office, was classified as a department head, and is found to be a supervisor.) Conley worked in a small enclosure in a corner of the store, where, among other things, she compiled records of cash receipts and processed employee timecards. Sometime after October 8, she was transferred to the cosmetic department. At the hearing, the General Counsel moved to amend the complaint to include office clerks and Respondent stipulated to their inclusion. Under all the circumstances, I find that such inclusion was proper (*Heck's, Inc.*, 159 NLRB No. 104; *Ohrbach's*, 118 NLRB 231; *Taunton Supply Corp.*, 137 NLRB 221), particularly as it was agreed to by Respondent at the hearing (Cf. *Heck's, Inc.*, 156 NLRB No. 73, fn. 17; *Heck's, Inc.*, 159 NLRB No. 104, fn. 1).

<sup>19</sup> 150 NLRB 1565.

<sup>20</sup> Trial Examiner's Exhibit 1.

pervisors and that one who was listed as the "night-watchman" was a guard. Of the remaining 38, there was a dispute at the hearing only as to Roger Davis, who was listed on the exhibit as a department head. The General Counsel also contended at the hearing that the list was incomplete. However, after the hearing, the General Counsel withdrew this contention,<sup>21</sup> and Respondent indicated that it was satisfied that, as contended by the General Counsel, Davis was not a supervisor on October 8, but an employee.<sup>22</sup> It follows that the parties are now in agreement, and it is found, that on October 8 and during the ensuing week the unit consisted of 38 employees.

At the hearing the General Counsel offered in evidence 30 signed Union authorization cards, which bore dates prior to October 8.<sup>23</sup> One of these cards, signed by McGuire, was later withdrawn, another was rejected because signed by France, a supervisor, and the card of Colm is hereby rejected for the same reason. Of the remaining 27 cards, the record shows that 6 purport to bear the signatures of individuals who were not in Respondent's employ on October 8. There remain 21 cards, most of which are challenged in Respondent's brief on various grounds, as follows:

1. Twelve cards are challenged on the ground that the signatory did not testify at the hearing. However, these

---

<sup>21</sup> Trial Examiner's Exhibit 2.

<sup>22</sup> Trial Examiner's Exhibit 3.

<sup>23</sup> An additional card, that of Linda Fields, bore the date of November 27, which was subsequent to the Union's demands for bargaining in October.

At a later point in the hearing, the General Counsel offered in evidence 19 new cards, of which 17 were shown to have been signed by persons employed in Respondent's Ashland store on various dates in January 1967. The General Counsel would add these cards to those already in evidence, and contends that there was a continuing demand by the Union, in January 1967, at a time when, as allegedly shown by such cards, the Union enjoyed majority status, and that such demand was rejected by Respondent for invalid reasons. However, in view of my ultimate findings below, there is no need to pass on this issue.

cards were properly authenticated by witnesses at the hearing, who attested to the signing of the card.

2. Criswell's card is contested on the ground that he was a department head. However, the record does not support this contention.

3. Clare's card is attacked on the ground that France, her department head, talked to her about the Union. While Clare initially acknowledged that, before she signed the card, she discussed the Union at some length with France, who expressed the view that it "would be a good thing" if the Union organized the employees, at a later point in her testimony she professed to be unable to recall whether France talked to her about the Union before or after she signed the card, and averred that she had little contact with him other than in connection with her work, as they were not "very fond of each other." She insisted, moreover, that she signed the card at the request of a Union agent, after discussing the pros and cons of union representation, and she denied that France's endorsement of the Union had any bearing on her decision to sign the card, explaining that she signed it because she "didn't like how things were," and she did not like France and how he "ran things." It thus appears that it was her resentment of France's conduct as a supervisor, rather than his endorsement of the Union, that impelled her to sign the card.

Moreover, in *Aero Corporation*<sup>24</sup> in rejecting the contention that a card was invalid because solicited by a minor supervisor, the Board said:

"... to permit Respondent now to rely on Johnson's activities to justify its refusal to recognize the Union designated by a majority of its employees, would encourage Respondent to have just such marginal supervisors join in the employees' organizing activity, secure in the knowledge that, if the Union should gain a majority, disclosure of the supervisor's real status would defeat that majority."

<sup>24</sup> 149 NLRB 1283, 1287, enf. 363 F.2d 702, 708 (C.A.D.C.).

This rationale was specifically approved by the Court of Appeals in that case.

Under all the foregoing circumstances, it is found that Clare's card is valid.<sup>25</sup>

4. The cards of Wheeler and Morris were attacked on the ground that they were authenticated at the hearing only by specimens of their signatures taken from Respondent's payroll records.<sup>26</sup> However, after the hearing the parties submitted a stipulation to the effect that Wheeler's card was signed by him on the date shown thereon,<sup>27</sup> and, in view of this stipulation, no valid reason appears for rejecting his card.<sup>28</sup> As to Morris, it was stipulated only that his whereabouts were unknown and that he was unavailable to testify. However, I am satisfied from a comparison of his purported signature on the Union card with the specimen referred to above that the card was signed by him.<sup>29</sup> While there was no testimony at the hearing that such card was signed on the date shown thereon (October 2), it is proper to presume the accuracy of that date.<sup>30</sup>

<sup>25</sup> *Radio Station KVEC*, 93 NLRB 618, 623.

<sup>26</sup> Tax withholding certificates.

<sup>27</sup> See Trial Examiner's Exhibit No. 4 and my order of March 16, 1967.

<sup>28</sup> At the hearing, ruling was reserved on the admission of this card. It is hereby ordered received in evidence.

<sup>29</sup> As to the propriety of proving the authenticity of a union authorization card through comparison of the signature thereon with a specimen signature, see *Aero Corporation*, 149 NLRB 1283, 1285-1286, and 28 USCA Sec. 1731, which authorizes such comparison by Federal courts, without any limitation as to the conditions under which such comparison may be made. For common law authorities to the same effect, see *Wigmore on Evidence*, 3rd ed., sec. 2016 (fn. 1).

<sup>30</sup> *Wigmore on Evidence*, 3rd ed., sec. 2520(b). While such presumption is rebuttable, there is no contrary evidence here; and, indeed, the only other evidence on the point is the notation made by Darnell on the sheet, on which he recorded the results of his October 8 poll (Respondent's Exhibit 1), indicating that Morris aligned himself on that date with the Union adherents. Such evidence is not only consistent with, but tends to confirm, the presumption that Morris signed a Union card on a date prior to October 8,



It is concluded therefore that on October 8, the Union had signed cards from 21 out of 38 employees in the unit, and that it represented a majority of such employees on that date.

*c. The Union's request*

Respondent contends that the Union did not make a proper request for bargaining. Union Agent Spencer testified that on October 8, he told Holroyd that the Union represented a majority of the "employees," whether or not department heads were included in the unit, and Spencer's letter of October 11 reaffirms the Union's claim to represent a majority of the "employees" in the Ashland store, regardless of the status of the department heads;<sup>31</sup> and he there prognosticates, on the basis of his experience with Respondent, that the issue of the appropriateness of the Ashland unit would probably reach the Board, but he asserts that, no matter how the Board should rule on the department heads, the Union would still have a majority.

In his reply of October 13, Holroyd acknowledges that in their October 8 conversation, Spencer claimed to represent a majority of the "employees" in the store, and the letter continues:

Pursuant to my questioning you stated that such majority existed with or without the department heads and you were making a demand to include the department heads or to exclude them depending upon what the Board decided in their case. This answer resulted in a very confused demand and we must therefore conclude that you did not demand recognition in an appropriate unit.<sup>31a</sup>

<sup>31</sup> In this letter and his subsequent letter of October 25, Spencer specifies the exclusion of the office employees. While the one such employee here involved has been included by me in the unit, it is well settled that such a slight variance is immaterial. See *Heck's, Inc.*, 156 NLRB No. 73.

<sup>31a</sup> I do not credit the foregoing self-serving, hearsay version of Spencer's demand, insofar as it conflicts with his testimony.

In his reply of October 25, to the foregoing letter, Spencer made it clear that he was presently defining the unit as either a store-wide unit including "non-supervisory department heads" or as one which excluded department heads. Spencer was thus, offering Respondent a clear, present choice between (1) a unit which included department heads, on the assumption that they were not supervisors, and (2) one which excluded them. Respondent contends that, because it was offered such a choice, Spencer's unit request was ambiguous. However, there was no ambiguity in Spencer's request in the sense that it was not clear what unit he was willing to bargain for. Each of the alternative units was precisely defined, and he made it abundantly clear that he was equally willing to bargain for either one. Essentially, the situation is the same as if Spencer had merely proposed the exclusion of supervisors, and indicated that he was willing to abide by Respondent's determination as to the supervisory status of the department heads.

Moreover, even if the Union had erroneously insisted on including the six department heads, it appears that the Board would not have deemed its bargaining request defective for that reason.<sup>32</sup> It is not clear why the Union should be in a worse position, because it indicated indifference to the unit placement of the department heads. Respondent had no greater burden here than it had in the case just cited, involving its Parkersburg store. Here, as there, Respondent was required only to indicate in what respect it deemed the requested unit to deviate from the one it considered proper. Moreover, here unlike there, Respondent was assured that the Union would adapt its unit request to Respondent's views.

Accordingly, I find no fatal defect in the Union's bargaining request of October 8 or any of its subsequent requests.

<sup>32</sup> *Heck's Inc.*, 156 NLRB No. 73, involving the Parkersburg store. There the Board found that a request for inclusion of as many as 5 employees out of a unit of 37 was not defective, even though the 5 were found ineligible. Here, there were, as found above, 38 in the appropriate unit.

d. *The "good-faith" issue*

Respondent offered no oral testimony at the hearing concerning the reason for its decision not to recognize the Union. Darnell averred only that the authority to make that decision was delegated to Respondent's labor relations adviser, Holroyd, who was also its trial counsel, and, although the Union called upon Holroyd to take the stand, he refused to do so.<sup>33</sup> Accordingly, the only insight into Respondent's reason for refusing to recognize the Union is afforded by Holroyd's letter of October 13, which, after alleging that the Union's unit request was defective for the reasons noted above, continued as follows:

Irrespective of this and in addition, we have caused a poll of all employees in that store to be conducted, the resulting answer produced an overwhelming statement that you did not represent the employees. Accordingly, recognition is declined until such time as you have been certified as the majority representative of the employees involved by the N.L.R.B.

It has already been found, on the basis of Darnell's uncontradicted testimony, that the result of this poll was in fact adverse to the Union. However, it has also been found that such poll did not conform to the requirements of the *Blue Flash* rule and was coercive. It is well settled that, in rejecting a union's recognition request, management may not, consistently with the requirements of good faith, rely on a count of union adherents obtained under coercive circumstances.<sup>34</sup> Such a poll has the twofold vice that it is patently not a reliable measure of employee sen-

<sup>33</sup> As the Union did not press the matter further, I had no occasion to rule on the propriety of such refusal. It is clear, however, that, if, as Darnell insisted, Holroyd was vested with sole responsibility for making such a decision regarding Respondent's labor relations policy as was here involved, he was subject to examination regarding his motivation to the same extent as any other representative of management, provided only that he could not be required to disclose any communications with his client that

<sup>34</sup> *Preiser Scientific, Inc.*, 158 NLRB No. 133, and cases there entered into the matter.

cited. *Home Pride Provisions, Inc.*, 161 NLRB No. 47.

timent, and that it is calculated to deter the employees from remaining union adherents in the future. Accordingly, it is found that, by its resort to, as well as its reliance on, the foregoing poll, Respondent demonstrated its bad faith.

I am mindful of the Board's finding in 159 NLRB No. 104, involving Respondent's Huntington store, that in that case the polling of employees by management concerning their union sentiments, "while unlawful was not so flagrant that it must necessarily have had the object of destroying the Union's majority status \* \* \* nor was Respondent's conduct of such a character as to support an inference that Respondent's refusal to bargain was made in bad faith in violation of Section 8(a)(5) and (1) of the Act."

However, here, unlike there, it was shown that Respondent was satisfied, even before taking the poll, that the Union had achieved majority status. Respondent, therefore, could have had no object in polling the employees on October 8, other than to coerce them into repudiating the Union. Thus, there is present here an essential element found to be lacking in the Huntington case—namely, coercive conduct which "necessarily . . . had the object of destroying the Union's majority status."

Moreover, even if this be viewed as a case where Respondent engaged in no unduly coercive conduct at the time of its refusal to honor the Union's request, it would still be found that such refusal was unlawful. Such a finding would be consistent with the Board's current policy as enunciated in *John P. Serpa, Inc.*, 155 NLRB 99, *Aaron Brothers Company*, 158 NLRB No. 108, and *H & W Construction Co.*, 161 NLRB No. 7. The net effect of these cases appears to be that, where there is no prior bargaining relationship, an employer, who is confronted with a request for recognition based on cards, need only refrain from any unfair labor practices "of such a character as to reflect a purpose to evade an obligation to bargain," and that, if this condition is met, the Board will not infer that his failure to recognize the union was in bad faith—i.e., because of rejection of the principle of collective bargaining. However, in the foregoing



cases the Board imposed a limitation on the foregoing rule, which is especially significant here—namely, that, even if the foregoing requirement is met, an employer's refusal to recognize a union will still be found unlawful, if it affirmatively appears that he in fact entertained no doubt of the Union's majority status.<sup>35</sup> Presumably, the rationale of this is that an employer cannot have a good faith doubt, if he had no doubt at all.

Here, there was affirmative evidence indicating that Respondent was aware on October 6, only 2 days before the Union's initial demand, that it had achieved majority status on that date.<sup>36</sup> No attempt was made to dispute this evidence,<sup>37</sup> and on the basis thereof it has been found that on October 6 Respondent was in fact aware of the Union's majority status. Accordingly, on that ground alone, it would be consistent with current Board policy to find that Respondent's refusal to recognize the Union was unlawful.

---

<sup>35</sup> See particularly the discussion of this point in *Aaron Brothers, supra*, and *H & W Construction Co., supra*. See, also, *Greyhound Terminal*, 137 NLRB 87, enfd. 314 F.2d 43 (C.A. 9); *Snow & Sons*, 134 NLRB 709, enfd. 308 F.2d 687 (C.A. 9). While the foregoing cases dealt with an inspection of cards tendered by a union, no logical reason suggests itself why a different result should apply where the employer has ascertained the union's majority status from other sources. See Member Jenkins' concurring opinion in *Aaron Brothers*, wherein he states that an unlawful refusal to bargain may be proved, *inter alia*, "by independent knowledge of the employer that a union has a majority."

<sup>36</sup> The last 2 of the Union's 21 valid cards were in fact signed on October 6. Thus, Mitchell's aforementioned statement to Clare that Respondent knew that the Union had obtained the decisive card when she signed one (on October 6) was factually correct on the assumption that she was the first to sign on that date. In any case, it suffices that Respondent knew by October 8 that the Union had a card majority.

<sup>37</sup> Respondent did not even call any representative of higher management to deny that Respondent had the knowledge of the Union's majority status imputed to it by Mitchell. This circumstance, in itself, warrants the inference that such imputation was correct.

Respondent contends, finally, in its brief that it was justified in refusing to bargain because of a letter dated October 1, received by Darnell, which read as follows:

Mr. Fred Haddad, President  
Tri-State Distributors, Inc.  
19th Street  
Nitro, West Virginia

Dear Mr. Haddad:

This is to notify you that Retail Clerks Union Local 1059 has interest in your Heck's, Inc. store located 3503 Winchester Avenue, Ashland, Kentucky, therefore, we hereby inform you that any agreements with any other Labor Organization would be in contradiction to the above stated interest and we will take all necessary legal action to protect such interest.

Please contact the undersigned in the event you have any questions concerning this matter.

Sincerely,

William E. Harvey, President  
Retail Clerks Union Local 1059  
187 South High Street  
Columbus, Ohio 43125

Admittedly, Respondent did not reply. The foregoing letter was not authenticated as having been in fact sent by Retail Clerks. Moreover, there was no testimony that such letter motivated Respondent's refusal to recognize the Union, and, significantly, Holroyd's letter of October 13, although purporting to detail the reasons for Respondent's refusal to recognize the Union, makes no mention of Retail Clerk's alleged "interest."

In addition, although a number of employees had signed cards for Retail Clerks as late as March 1964,<sup>22</sup> Menhouse testified, without contradiction, that no representative of the Retail Clerks had appeared at the Ashland store since the latter part of 1964, which was several months before the Union began its organizing campaign,

<sup>22</sup> See the findings in *Heck's, Inc.*, 150 NLRB 1565.

and nearly a year before the Union's bargaining requests. While in the case last cited, Retail Clerks filed, *inter alia*, a refusal-to-bargain charge, that charge was either withdrawn or dismissed before the hearing held in that case on July 14, 1964; and, so far as appears from the record, the only basis for Retail Clerks' claim in the October 1 letter that it had an "interest" in the Ashland store were the cards dating back to March 1964, and the outstanding order of the Board issued in that case on February 5, 1965, requiring Respondent to refrain from discouraging, or interfering with, employee activities on behalf of Retail Clerks.<sup>29</sup>

While the Board has held that, when he is confronted with competing claims by two rival unions, which give

<sup>29</sup> That order was enforced by the Court of Appeals on November 29, 1966, 63 LRRM 2527 (C.A. 6).

Respondent cites *Blade-Tribune Publishing Co.*, 161 NLRB No. 137, apparently as authority for the continuing vitality of the Retail Clerks' 18-month old cards. However, that case is clearly distinguishable, as it holds merely that, when an organizing campaign is interrupted by the processing of unfair labor practice charges and thereafter resumed by the same union, culminating in a demand for recognition, a card signed before such interruption may be regarded as still valid, even though over a year old. Here, there was no resumption of the organizing campaign by Retail Clerks at any time after its apparent suspension or abandonment late in 1964, nor any subsequent demand by that union for recognition. This difference in the factual setting of the two cases is of prime significance. For, in *Blade-Tribune* the employer was in essence attempting to avoid its bargaining obligation by relying on the disruption of a union's organizing campaign through its own unfair labor practices. Policy considerations were clearly opposed to the employer's position and required that the otherwise stale cards be validated, so that the employer might not profit by his own wrong. Here, on the other hand, Respondent would profit by its own wrong if it were allowed to rely on Retail Clerk's 18-month old cards as a reason for not bargaining with the Union, since the only basis for validating such cards would be Respondent's own unfair labor practices in 1964. Whether the result here reached would be prejudicial to Retail Clerks is speculative, as there is no evidence that it intended to, or did, renew its campaign at any time. There can be no doubt, however, of the prejudicial effect on the employees' interest in self-organization, if Respondent's contention is sustained, as they will then be denied the right to representation by a union to which they adhered in the face of Respondent's unremedied unfair labor practices.

rise to a real question concerning representation, an employer need not, and, indeed, may not, recognize either one,<sup>40</sup> there was here no demand by Retail Clerks for recognition or any claim to represent the employees, but only a vague assertion of an "interest" in the employees, and a caveat against negotiating any contract with the Union, and Respondent admittedly made no effort to obtain clarification of the Retail Clerks' foregoing ambiguous position. In view of these circumstances, as well as the absence of any competent evidence that the foregoing letter was actually sent by Retail Clerks, that Respondent's refusal to recognize the Union was prompted to any extent by that letter, or that Retail Clerks had any valid authorization cards on October 1, it is found that Respondent's reliance on that letter is misplaced.<sup>41</sup>

It is therefore concluded that, by refusing to recognize the Union on and after October 8, Respondent violated Section 8(a)(5) and (1) of the Act.

#### IV. *The Remedy*

It having been found that the Respondent violated Section 8(a)(1) and (5) of the Act, it will be recommended that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the Respondent refused to bargain in good faith with the Union, which represented a majority of the employees in an appropriate unit. Accordingly, I shall recommend that the Respondent be ordered to bargain, upon request, in good faith with the Union as the exclusive representative of the employees in the appropriate unit.

<sup>40</sup> *The Boy's Market, Inc.*, 156 NLRB 105, 107.

<sup>41</sup> *Boy's Market, Inc.*, *supra*. The Board there held that the refusal to recognize a union is not excused by a rival union's claim which is "clearly unsupportable or specious, or otherwise not a colorable claim." Here, not only was there no substantial basis for Retail Clerks' claim, but the fact that Holroyd's letter of October 13 does not even advert thereto is persuasive that Respondent recognized the speciousness of such claim. See, also, *Essex Wire Corp.*, 130 NLRB 450.



### V. Conclusions of Law

1. All employees in Respondent's Ashland, Kentucky, store, including office clerks, but excluding guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

2. At all times material the Union has been and still is the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining, within the meaning of Section 9(a) of the Act.

3. By refusing since October 8; to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) (5) and (1) of the Act.

4. By interrogation of employees about their Union activities, threatening reprisals for such activities, and creating the impression of surveillance thereof, Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, and has engaged in unfair labor practices within the meaning of Section 8(a) (1) of the Act.

### RECOMMENDED ORDER

Upon the entire record in the case, and the foregoing findings of fact and conclusions of law, it is recommended that Respondent, Heck's, Inc., Ashland, Kentucky, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain concerning rates of pay, wages, hours of employment, or other conditions of employment with Food Store Employees Union, Local # 347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, as the exclusive representative of all employees in its Ashland, Kentucky, store, including office clerks, but excluding professional employees, guards, and supervisors as defined in the Act.

(b) Coercively interrogating employees about their union activities, threatening reprisals for such activities, and creating the impression of surveillance thereof.

(c) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist the above-named Union, or any other labor organization and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by the provisos to Section 8(a) (3) of the Act.

2. Take the following affirmative action, which is deemed necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively in good faith with Food Store Employees Union, Local # 347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, as the exclusive representative of all employees of the Respondent, in its Ashland, Kentucky store, including office clerks, but excluding guards, professional employees, and supervisors as defined in the Act, with respect to rates of pay, wages, hours of employment or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its store in Ashland, Kentucky, copies of the notice attached hereto marked Appendix.<sup>42</sup> Copies of said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of at least 60 consecutive days thereafter

<sup>42</sup> In the event that this Recommended Order is adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Ninth Region, in writing, within 20 days from the date of receipt of this Decision, what steps Respondent has taken to comply herewith.<sup>43</sup>

Dated at Washington, D. C.

/s/ Sidney Sherman  
Trial Examiner

---

<sup>43</sup> In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

TXD-171-67

## APPENDIX

**NOTICE TO ALL EMPLOYEES  
PURSUANT TO****THE RECOMMENDATIONS OF A TRIAL EXAMINER OF THE****NATIONAL LABOR RELATIONS BOARD**  
and in order to effectuate the policies of the**NATIONAL LABOR RELATIONS ACT**

we hereby notify our employees that:

**WE WILL** bargain in good faith, upon request, with **FOOD STORE EMPLOYEES UNION, LOCAL #347 AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO**, as the exclusive representative of all employees in the bargaining unit described below in respect to rates of pay, wages, hours of employment, or other conditions of employment, and, if an understanding is reached, embody it in a signed agreement. The bargaining unit is:

All employees at our Ashland, Kentucky store, including office clerks, but excluding guards, professional employees, and supervisors as defined in the Act.

**WE WILL NOT** coercively interrogate our employees about their union activities, threaten reprisals for such activities or create the impression of surveillance thereof.

**WE WILL NOT** in any like or related manner interfere with, restrain or coerce our employees in the exercise of their right to self-organization, to form, join or assist **FOOD STORE EMPLOYEES UNION, LOCAL #347, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO**, or any other labor organization, to bargain collectively through representatives of their



own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from any or all such activities, except to the extent that such right may be affected by the provisos to Section 8(a) (3) of the Act.

HECK'S, INC.  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Room 2407, Federal Office Building, 550 Main St., Cincinnati, Ohio 45202 (Tel. No. 684-3663).

## DECISION AND ORDER

On March 30, 1967, Trial Examiner Sidney Sherman issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Decision and a supporting brief.<sup>1</sup>

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial

<sup>1</sup> The Respondent excepts to the Trial Examiner's finding that the Union authorization card of employee Morris was properly authenticated, and, by motion incorporated in its brief, moves that the record be reopened and a subpoena be issued, requiring the Trial Examiner to appear and testify concerning his qualifications as a handwriting expert. The Respondent contends that failure to grant its motion should result in the rejection of Morris' card, inasmuch as Morris did not testify at the hearing and no other witness testified that he saw Morris sign the card.

After the hearing, the parties stipulated that Morris was unavailable to testify, his whereabouts being unknown. The Trial Examiner (Section III, C, 3, b, 4 of his Decision), after comparing the purported signature of Morris on the Union authorization card with a specimen signature taken from the Respondent's payroll records, concluded that the card was signed by Morris, and found that such a comparison is a proper method of proving the authenticity of a signature (See footnote No. 29 of the Trial Examiner's Decision and the authorities cited therein). The Trial Examiner further found that it is proper to presume that the card was signed on the date shown thereon. (footnote No. 30 of the Trial Examiner's Decision).

We agree with the Trial Examiner's finding that Morris' card was properly authenticated. (See also, *Combined Metal Mfg. Corp.*, 123 NLRB 895; *Philamon Laboratories, Inc.*, 131 NLRB 80, enfd. 298 F.2d 176 (C.A. 2)). In any case, we note that even without Morris' card the Union had a majority of employees in the appropriate unit when it made its recognition demand. Accordingly, as we find the Respondent's motion to reopen the record lacking in merit, it is hereby denied.

error was committed. The rulings are hereby affirmed, The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations<sup>3</sup> of the Trial Examiner.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, and hereby orders that the Respondent, Heck's, Inc., Ashland, Kentucky, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

Dated, Washington, D. C. June 28, 1967.

/s/ John H. Fanning, Member  
/s/ Howard Jenkins, Jr., Member  
/s/ Sam Zagoria, Member

NATIONAL LABOR  
RELATIONS BOARD

[SEAL]

---

<sup>3</sup> We agree that the Respondent's polling of its employees was in the circumstances of this case violative of Section 8(a)(1) of the Act. Therefore, we find it unnecessary to rely on or about the Trial Examiner's additional or alternative grounds for that finding, as set forth in the last sentence of footnote No. 10 of his Decision.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

No. 11,671

---

NATIONAL LABOR RELATIONS BOARD, PETITIONER

*versus*

HECK'S INC., RESPONDENT

---

On Petition for Enforcement of Orders of the  
National Labor Relations Board

---

(Argued January 11, 1968.

Decided June 28, 1968.)

---

Before HAYNSWORTH, Chief Judge, and BOREMAN and  
WINTER, Circuit Judges.

---

PER CURIAM:

We decline enforcement of orders of the National Labor Relations Board<sup>1</sup> requiring Heck's, Inc. to bargain with Meat Cutters Local 347 in its Ashland, Kentucky store and Teamsters Local 175 in its warehouses in the Charleston, West Virginia area. Insofar as the orders proscribe other unfair labor practices and require the reinstatement of employee Goins, they will be enforced.

The Board's findings that Heck's, Inc. violated § 8(a)(1) of the National Labor Relations Act<sup>2</sup> by interrogating employees with regard to their union sympathies, threatening reprisals against employees for their union support, creating the impression of surveillance of its employees'

---

<sup>1</sup> 166 NLRB Nos. 32 and 38.

<sup>2</sup> 29 U.S.C. § 151, *et seq.*



union activities and offering employees benefits in exchange for their union opposition, are supported by substantial evidence. There is also substantial evidence to support the finding that employee Goins was discharged for his union activities, his dismissal being a violation of §§ 8(a) (3) and (1) of the Act.

However, the Board's findings that the refusal of Heck's, Inc. to bargain with the unions was a violation of §§ 8(a) (5) and (1) of the Act cannot stand. The Teamsters and the Meat Cutters based their demands for recognition and bargaining on union authorization cards. In the Charleston area warehouses, the union had obtained 13 signed authorization cards from the employees in the requested unit of 26 members when the first demand for recognition was made. An additional card was procured the next day when a second demand was made. The Ashland store union fared a little better, obtaining 21 signed authorization cards from 38 employees in the unit, although there was some ambiguity as to the precise size of the bargaining unit requested. Heck's, Inc. refused to recognize and bargain with the unions under a claim of belief that they had not yet attained majority status in the respective bargaining units.

We have recently discussed the unreliability of the cards, in the usual case, in determining whether or not a union has attained a majority status and have concluded that an employer is justified in entertaining a good faith doubt of the union's claims when confronted with a demand for recognition based solely upon union authorization cards. We have also noted that the National Labor Relations Act after Taft-Hartley amendments provides for an election as the sole basis of a certification and restricts the Board to the use of secret ballots for the resolution of representation questions.<sup>2</sup> This is not one of those extraordi-

<sup>2</sup> Even the Board has agreed with our construction of the Act.

<sup>3</sup> Section 9(c) of the Act, as amended, prescribes the election by secret ballot as the sole method of resolving a question concerning representation, and leaves the Board without the discretion it formerly possessed—but rarely exercised—to utilize other 'suitable means' of ascertaining representatives." Annual Report of the NLRB for 1948 at p. 32.

nary cases in which a bargaining order might be an appropriate remedy for pervasive violations of § 8(a)(1). It is controlled by our recent decisions and their reasoning. See *NLRB v. S.S. Logan Packing Co.*, 4 Cir., 386 F.2d 562; *NLRB v. Sehon Stevenson and Co.*, 4 Cir., 386 F.2d 551; *Crawford Mfg. Co. v. NLRB*, 4 Cir., 386 F.2d 367, cert. denied \_\_\_\_ U.S. \_\_\_\_, 36 LW 3403. There was not substantial evidence to support the findings of the Board that Heck's, Inc. had no good faith doubt of the unions' claims of majorities.

*Enforcement granted in part  
and denied in part.*

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

No. 11,671

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

HECK'S INC., RESPONDENT

THIS CAUSE came on to be heard upon the petition of the National Labor Relations Board for the enforcement of certain orders issued by it against Respondent, Hecks, Inc., its officers, agents, successors, and assigns on June 28, 1967, and June 30, 1967, in proceedings before the said Board known upon its records as Cases Nos. 9-CA-8356, 9-CA-3477, and 9-CA-3728; upon the answer of the Respondent, and upon the certified list in lieu of a transcript of the record; and the said cause was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered, adjudged and decreed by the United States Court of Appeals

for the Fourth Circuit, that the said orders of the National Labor Relations Board be, and they are hereby, enforced as to those portions dealing with the violations of §§ 8(a)(3) and (1) of the National Labor Relations Act and requiring the reinstatement of employee Goins, and that enforcement with regard to that portion of the orders dealing with the violations of §§ 8(a)(5) and (1) of the Act is denied; and that the said Respondent, Hecks, Inc., its officers, agents, successors and assigns abide by and perform the directions of the Board in said orders as so enforced contained, in accordance with the opinion of the Court filed herein.

/s/ Clement F. Haynsworth, Jr.  
Chief Judge, Fourth Circuit

A True Copy, Teste:

Samuel W. Phillips, Clerk  
By /s/ Margaret L. Davis  
Deputy Clerk

Filed June 28, 1968, Samuel W. Phillips, Clerk

